

E N Q U I R I E S
CONCERNING
LETTRES DE CACHET,
THE CONSEQUENCES OF
ARBITRARY IMPRISONMENT,

AND A
History of the Inconveniencies, Distresses, and
Sufferings of STATE PRISONERS.

Written in the Dungeon of the CASTLE OF VINCENNES;

BY THE
COUNT DE MIRABEAU.

WITH A PREFACE BY THE TRANSLATOR.

Non ante revellar
Exanimem quam te complectar, Roma, tuumque
Nomen, libertas ! & inanem prosequar umbram. (LUCAN.)

Di quibus imperium est animarum, umbræque silentes
Et chaos, & Phlegeton, loca nocte silentia late;
Sit mihi fas audita loqui ! sit numine vestro
Pandere res alta terra & caligine mersas. (VIRG.)

VOL. I.

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D E D I C A T I O N.

T O

H I S G R A C E

T H E

D U K E o f N O R F O L K.

IT is very unusual to dedicate translations; to which, whether well or ill executed, in general, very little importance or reputation is annexed. The nature of the original work, the peculiar circumstances under which it was written, the generous principles, and enlarged views it contains, for the freedom, and general interests of mankind, and above all, the superior mind of the author, who, himself of a noble family,

A

looks

iv D E D I C A T I O N.

looks down with indignation and contempt on the fervile conduct of his own order in an arbitrary monarchy, holding up to imitation, even in chains, the paramount duties of the man, the citizen, the philosopher; these are the motives of the present dedication. The unknown translator is as determined an enemy to adulation as the high-minded author; but respect for merit is no adulation. He wishes not to offend, by thinking he discovers some congeniality of sentiment between his author, and the nobleman he addresses. To ask the protection of the Duke of Norfolk, for a work the Translator admires, and in which he has no personal merit, if it be a mistake, is at least a sincere and disinterested mark of his respect.

Jan. 25, 1787.



PREFACE.

P R E F A C E.

THE title of the present work seems only to announce a discussion purely local, and uninteresting to any other than the French nation ; this, however, is far from being the case. The author, plunged a second time into a state dungeon, by an arbitrary mandate, in which dreary abodes he had passed the best days of his youth, embraced the opportunity at length offered him by the late lieutenant of police, of committing to paper, at great personal risk, as liberal and noble sentiments as have ever proceeded from a generous and enlightened mind.

Had the *Count de Mirabeau* confined himself, like the celebrated *Mr. Linguet*, in his *Memoirs of the Bastile*, to details of his own sufferings, however interesting the history of human misery must ever be to human nature, the translator would not have given himself the trouble of celebrating an egotist : but when he saw the author availing himself of his subject, to descant on the dreadful abuses of arbitrary power in every country, and in every age, and pointing out, with an admirable accuracy, great knowledge, and exquisite sensibility, the fatal consequences of the slightest infringement on the natural rights of mankind, and, really, making

his own sufferings but a secondary object in his undertaking, the translator, who glories in thinking with such men, determined to contribute his mite to the propagation of such principles, and, by submitting to his countrymen so affecting a display of the progress of despotism, to shew them how imperceptibly and completely a nation may lose its liberties, and be reduced to a desperate state of ostentatious, but wretched servitude.

*Facilis descensus Averni,
Sed revocare gradum ; hic labor, hoc opus est !*

The *first part* of this work embraces a variety of *politico-philosophical* questions, as the author styles them, of the most extensive and general utility. Besides a very learned and laborious discussion of natural right, the fatal effects of the union of the civil and ecclesiastical powers, the origin of all government, and the social right of punishment, richly illustrated by notes, it contains a very neat and precise history of the progress of despotism in France, the chain of artful and violent measures by which it has arrived at its present uncontrouled state of exercise, and a series of specific proofs of the national privileges once possessed by that enslaved people, a subject hitherto discussed but vaguely, and but little understood in England.

The reader will find too, in the *tenth chapter*, a very ingenious and useful enquiry into the police of great cities, as connected with public liberty, exemplified in those of Amsterdam, London, and Paris, wherein he will see an admirable delineation of the *enormities*, not *beauties*, as Englishmen are artfully wished to believe, of the latter metropolis, that sink of vice, violence, and insecurity.

In

In the *twelfth chapter* is a cursory view of the history of France, and the French monarchs, from the reign of Philip le Bel to the present time, drawn by a most masterly hand, and, as the translator thinks, with strict impartiality, but marked with the hardy traits of a zealous and determined enemy to tyranny. Louis XIV. that insolent despot, whose character, as it escapes from the blaze of false glory, has been long declining in the eye of impartial justice, is here stripped of all his arrogant pretensions, and delivered over to the present age, and to posterity, as one of the most fatal scourges that ever ruled, and tyrannized over a generous people; nay, even as a fastidious pretender to the patronage of the arts and sciences, the strong-hold of his flatterers, and the remnant of his tottering reputation.

The reign of Louis the *well-beloved* too is portrayed with no less ability and boldness; nor does he hesitate to point out the enormities of the present established system of government, nor to express a noble indignation at the complete triumph of despotism, and the downfall of public freedom and public spirit in his country.

Throughout this part, as well as in the whole work, the author passes many deserved eulogiums on the English constitution, interspersed into such just and salutary strictures on its actual states, and the perils it has to apprehend, as cannot be unwelcome to any real friend to freedom. His superior mind soars above the authority of names, and every predilection not founded on real utility, and on the solid basis of permanent public good. He combats with as much intrepidity, but always with respect, the erroneous positions of a Montesquieu, or a Blackstone, as he would trample on the sophisticated

phisticated and dangerous dogmas of a Filmer, a Shebbeare, a Johnson, or a Markham.

In the *second part*, is the detail of his own sufferings in the dungeon of Vincennes, and the usual mode of treatment in state prisons, with an exquisite portrait of one of those monsters, with which France is infested, who, through scenes of adulation, and every species of infamy, though decorated with the insignia of military merit, arrive at the still more odious occupation than the executioner's, that of being the perpetual torturers of their fellow-creatures. The manner in which this detail is given, though sufficiently minute, is neither trivial nor uninteresting. Self does not constitute its leading feature, as in that of Mr. Linguet. The author's philanthropy and sensibility are universal; his feelings are exquisitely painted, but his is a manly sorrow; nor can any generous mind refuse a tear of sympathy with him, for the cruel anguish of the *wretched thousands*, groaning in these horrid mansions.

The translator will only add, that the above eulogium is no more than the genuine tribute of an uninterested and sincere admiration of the work, which he would not have attempted to clothe in his native language, did it not contain principles and sentiments congenial with his own, and under the hope of being useful to mankind. Of the execution he shall say nothing, but request the indulgence of the reader for occasional errors, as he is at a great distance from a very careful press, it is true, but without the possibility of correcting it.

FEBRUARY 16,

1786.



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I N T R O D U C T I O N.

THE object of this undertaking is to treat of arbitrary imprisonments, and of state prisons. Several writers have already handled this most important subject, but some of them have confined themselves to general maxims, without pointing out their application, whilst others, if I may be allowed the expression, have only ventured to speak half truths, and, by their pusillanimous silence, have furnished bad men with weapons, and discouraged every effort of the good. Several writers too, exasperated by their personal sufferings, and limiting themselves to details, have thrown discredit on their works by exaggerations, or by the relation of false anecdotes.

I hope, for my own part, to avoid these errors, not that I flatter myself with possessing more talents than my predecessors in the same pursuit; but I can answer for my courage, and the fidelity of my narrative. Mine is an honourable and simple object. I know that the use of *lettres de cachet* (a), and of

b 2
illegal

(a) In this work, I only treat of *Lettres de Cachet*, as letters of exile, or orders, by virtue of which a citizen is made a prisoner. Every body knows that *Lettres de Cachet* are applied to other

illegal imprisonments, that strongest arm of arbitrary power, is irrevocably fixed. Power never foregoes the acquisitions it has once made, not even those by which it may be itself exposed to dangers. We may search history in vain for the example of any Prince who has voluntarily consented to limit his authority (b). Some indeed there are, amongst

other purposes, and that in the strict acceptation of the words, they are to be understood only as letters proceeding from, and signed by the king, and countersigned by a secretary of state, written upon common paper, and folded in such a manner as to prevent their being opened without breaking the seal. The name of *Lettres de Cachet* is but of a modern date, for it is asserted, that the term was used for the first time in the ordinance of Orleans in 1560. (Montblin, *Maximes du droit public François.*)

(b) In Rome the kings possessed both the executive and judicial powers, a formidable union, doubtless, to which nothing was wanting but the addition of the legislative, to perfect the completest despotism. Servius Publius, who was in some respects an usurper, relinquished the civil, reserving only to himself the criminal jurisdiction. But who does not perceive, that by retaining what alone was really formidable, he made, in fact, no sacrifice of power? It is true that the assemblies of the citizens received in every case appeals from the royal tribunal, and from the senate; and Cicero reckons this privilege amongst the royal constitutions. (Tusc. quæst. 4, 1. See also Senec. Epist. 108, and the examples quoted by Val. Max. l. viii. 1. and Tit. Liv. i. 26.) But what availed assemblies of citizens, under the government of a despot?

In all ages, and in every country, civil liberty has principally depended on the form of criminal judgments, and the nature of penal laws, in proof of which it is worthy of remark, that in all the European states, England alone excepted, the criminal is infinitely more imperfect than the civil law. We may form some idea of the avidity of power, which seems to be the contagious malady of exalted situations, when we consider that neither Titus, Nerva, Trajan, the Antonines, nor Marcus Aurelius, had the generosity or the courage to establish a limited monarchy at Rome. The prince who first built a temple to *Beneficence* was essentially wanting in his respect to *Justice*. He retained a power which was no other than an usurpation. Marcus Aurelius respected the laws, says Lyttleton; but had he chosen to act differently,



the very inconsiderable number of enlightened men, who have filled a throne, who, from the force of their understanding, have not attempted usurpations ; but we have yet to look for the Phænomenon of a Prince who shall willingly recede from those of his predecessors. All but weak Princes have vigorously defended their prerogatives, when any attempt has been made to limit them, and have eagerly availed themselves of the first favourable opportunity to recover their lost claims. Mankind may esteem themselves happy, therefore, if their situation does not change for the worse, and if they can console themselves with the feeble, but almost desperate hope, that it may be some time better, should they ever attain a more perfect knowledge of their rights, and their powers, and should their real interest and their will, that is to say, justice, become one day, thanks to the progress of information, the general and fundamental law of society, equally binding on its leaders, and the individuals of which it is composed.

‘ What you hint on the subject of *lettres de cachet*, writes Madam de Maintenon, to the Cardinal de Noailles, will not diminish their number ; there is a general persuasion that they are very necessary, and that there is a right to issue them. You will urge, no doubt, excellent reasons against them ; but what probability is there that you will carry your point against three ministers, against all their predecessors, whose example they quote, and the prescriptive usage of this mode of go-
‘ ver-

ferently, the Romans were unable to prevent him. They were, in fact, as completely slaves therefore under his government, as under that of his son Commodus. *Unfortunate father ! Unhappy king !* adds the English philosopher : *How execrable is arbitrary monarchy, since even the virtues of a Marcus Aurelius only enabled him to retard the ruin of his family, and the misfortunes of his country, during his own life !* (Dialogues of the Dead.)

‘verning?’ All this is but too true, however ill-becoming the consort of a king, his favourite, and his friend. The difficulty of establishing truth is no sufficient motive, surely, for stifling its efforts. She would have served God and the king better by struggling against the violent counsels of ministers, than by petty acts of devotion, by alms, and pious exhortations (c).

I have

(c) On reading what remains of the directions to Madame de Maintenon, if we except one single letter of the amiable and respectable Fenelon, they appear more like the exhortations of an old monk to an antiquated mother-abbess. The correspondence turns on trivial acts of devotion, with which they amused a woman almost seated on the throne, the friend, confidante, and counsellor of the sovereign. Of herself she was too weak to execute this good work, but she was at least in a situation to advise it. Instead of urging her, and alarming her conscience respecting the power she possessed, and the opportunities she lost of doing good, they employed her time in such prayers and examinations, as are enjoined the most obscure, the weakest, and the idlest devotee. Encouraged by the flatteries of her confessors, and the certainty of having obeyed their precepts, she thought herself a saint in the place of queens, whilst she neglected even the common duties of the citizen. *I have received*, writes she to the Cardinal de Noailles, *an anonymous letter, taking me to task for the liberty granted to mankind to kill and ruin themselves in summer, and prohibiting amusements in winter.* THIS LETTER IS OF NO CONSEQUENCE: I HAVE SAID NOTHING ABOUT IT — Alas! what did she then talk about? She tormented the king with monastic practices, and lamented that he neither prayed long enough, nor with sufficient fervour. She entered into all the quarrels of the clergy, and, by envenoming these disputes with all the trifling points of controversy, contributed to render them important. She protected unskilful ministers and generals, provided they were bigots, as if piety could supply the want of talents; as if court devotion were not always the mask of ambition and intrigue, and as if the sovereign ought to require any thing farther from the servants of the state than that zeal and information which merit success, and can almost command it. As for the rest, absorbed in the details of St. Cyr, and other religious communities, this celebrated woman, who abandoned Fenelon, patronized

I have not, however, conceived the chimerical hope of inducing the government to proscribe a plan so interesting to the great, and which ministers will never willingly renounce. But who can, without the deepest regret, hear citizens, in other respects honest, and incapable of paying homage to despotism, lightly adopting maxims totally destructive of liberty, and suffering themselves to be persuaded of the use and necessity of this violation of every law and regulation of society, from partial and particular examples? What resource have we remaining, should even the public opinion invoke arbitrary power? It is the object of this work, as it is the duty of an honest man, to seize every opportunity of dispelling so fatal an illusion. As it is my design likewise to disclose the internal tyranny of state prisons, it will be necessary to trace this injustice to its source. If I am deceived in imagining that the general diffusion of truth and reason, by obtaining the plurality of suffrages, may one day triumph over ambition, intrigue, and despotism, mine is at least an honest error. Five English patriots in the last century, risked their lives and fortunes to bring the great question of arbitrary imprisonments to a final decision, and by their noble courage merited the everlasting gratitude of their fellow citizens. They nobly dared to claim the protection of the laws against the arbitrary will of the sovereign, their oppressor, "and Charles the First," says Mr. Hume, (d) "*saw with astonishment a power, exercised almost uninterruptedly by his predecessors, proved to be, by the*" most

patronized Chamillart, and hated Catinat, never undertook any thing in favour of the people, and imagined she had done good, when she had distributed her alms.

(d) *The history of Great Britain under the house of Stuart*, vol. 1. 4to edit. chap. 1, page 152.

“ most accurate discussion, in diametrical opposition to the clearest laws.” Our chains in this country are too well rivetted, and my confinement too rigorous, to admit of my making such a legal effort. But I address to the nation at large those complaints I am unable to bring before the tribunals of justice, which would also refuse to listen to them; and from the depth of a loathsome prison, I pay the debt I owe my country, as far as I am able, from the weakness of my talents, and the peculiar circumstances of my situation.

One of the principal objects of this publication is to lay open the robberies committed on the unfortunate prisoners entrusted to his charge, by the unrelenting avarice of a mercenary subaltern. I name only this man, because I know no other so culpable: I name him, because fortunately he is mortal, or liable to be removed, and lest the imputation of such meannesses should fall upon another. I shall take a general view of the constitution of state prisons, as they are all regulated on the same principles, and nearly by the same methods; it is to be feared, therefore, that by furnishing those who have the direction of these houses with easy means of malversation, the same abuses prevail but too generally in them all.

The king makes a liberal provision for the wants of state prisoners, yet those confined in the dungeon of Vincennes are infinitely worse treated than the servants of the man who enriches himself at their expence. I do not know whether this be precisely the case in other castles of the same kind, but it is to be presumed, from the very nature of their institution, that if the abuses are not so flagrant, it is notwithstanding certain that great abuses exist in them all. So barbarous a pillage, committed on men already too unfortunate, can
never

never certainly be the intention of a government which lavishes large sums in the support of state prisons. Its wretched subjects, however, who groan under this arbitrary imprisonment, have not the less right to charge it with their miseries, for it is from its ministers alone they can expect justice, from those ministers, who deprive them even of the means of complaint.

Nor is it only on the score of physical wants that the prisoners of Vincennes are cruelly oppressed. Their fate, already too wretched, from the complete privation of every species of liberty, is still farther aggravated in contempt of humanity, nay, even good sense, in the light in which I shall endeavour to exhibit it. The reader will here find a faithful exposition of every grievance. The facts may easily be verified; they are not vaguely marked, and I shall point out infallible methods to prove their authenticity. I shall first treat of arbitrary imprisonments, next of state prisons. I shall prove that the royal prerogative, by virtue of which a citizen may be kept close prisoner, by a *lettre de cachet*, and without any judicial form, is an act of violence destructive of our *jus publicum*, and censured by our laws: that were it even founded on a legal title, it would be no less odious and unjust, as it is in direct repugnance to the rights of nature: since arbitrary imprisonments (e) destroy every idea of liberty, and that liberty is the common unalienable right of all men. I shall prove, in short, that the use of *lettres de cachet* is tyrannical in every point of view, and its pretended utility an illusion, which can never be weighed against the inconveniencies resulting from so terrible a practice.

VOL. I.

c

After

(e) It is easy to perceive that the arguments respecting imprisonments, will apply equally to the case of exiles, and every other species of punishment.

After thus considering *lettres de cachet* relating to positive and natural rights, as well as to society and individuals, I shall give an account of the interior administration of the dungeon of Vincennes, and point out the simplest methods of ascertaining the principal abuses in the unfaithful and oppressive management of that prison, and of administering a sure and efficacious remedy.

I have long meditated on this subject, and think I have fairly considered it in every point of view, a necessary preliminary, on which, in fact, depends the justness of our opinions on every subject. If I have failed in the execution, it must arise, either from my want of talents, or of that assistance, of which I am totally deprived. The small portion of information I possess has been acquired in the short space of a hitherto unfortunate and agitated life. I never knew what it was to have a master, and I have no longer the comfort of any friendly counsel. Torn from my friends, deprived of my books, my correspondences, my peace of mind, my liberty, my health, of every thing, in short, except leisure and sensibility, it is impossible to groan under heavier chains than I do ; but free or not, I will never cease with my last breath, to assert the rights of human nature. Alas ! what moment more proper to combat despotism, than when groaning under its oppression ?

I have no motive of personal animosity ; my work is by no means a malignant satire, the result of resentment and ill-humour. The reader will here find no random anecdotes, no ingenious fictions nor exaggerations. If it is expressed with some energy, that energy flows from the circumstances, and the subject, if with some warmth, from my determined hatred of injustice. I write
with

with the hope of being useful, if not by propagating principles which are not calculated to please the government, by giving details, at least, of the oppressions with which ministers are unacquainted, and which it cannot be their interest to tolerate. Should they not profit by this narrative, in which every syllable is strictly conformable to truth, those parents, who in a fit of anger, or under painful circumstances, have delivered up their children to the greedy gaoler of those gloomy dungeons, whence their cries can never be heard, will be induced to reflect possibly on the use they are making of their money and their influence. Should their unfeeling nature count for nothing the cruel sufferings of their wretched victims, they may consider that it is in their power to sacrifice them at less expence. But if they still listen to the voice of nature, if it be their object to punish, but not to overwhelm, they cannot fail to see the danger, and hasten to repair their error.



ON
LETTRES DE CACHET
AND
STATE PRISONS.

PART I.

LETTRES DE CACHET CONSIDERED RELATIVELY
TO POSITIVE AND NATURAL RIGHT, TO SOCIETY,
AND TO INDIVIDUALS.

CHAP. I.

Arbitrary commitments formally censured by our laws, from the commencement of the monarchy to our times. Cruelty of the family of Valois, and particularly of Louis XI. towards state prisoners. At what period Lettres de Cachet were multiplied. The first and only edict which authorises them.

THE same use has been made of them at all times, said Louis XIV. (a) when he was spoken to on the iniquity of Lettres de Cachet. His ministers had made him believe, no doubt, this impudent falsehood, which agreed so perfectly with his haughty temper. This prince, who asked, of what

(a) Memoires de Maintenon.

use it was to read (b), knew nothing ; he had not the smallest knowledge of history. Experience alone might have furnished him with some information ; but experience, which is not to be acquired by the mere dint of acting, for the most active life is still too limited by time and circumstances, will ever prove a faithless guide, unenlightened and unaided by theory. Louis XIV. disdained the one possibly as much as the other. Every thing had bent under the weight of his will : he mistook the fact for the right : he was ignorant that many ordinances of his predecessors forbid all judges “ *to pay any respect to lettres closes, or de cachet, which may be granted in the way of justice* ” (c).” He was ignorant, that by remounting to the ancient annals of the nation, we find that every

(b) It was of duke de Vivonne that Louis XIV. asked this strange question. This courtier, who was jolly, and had rosy cheeks, replied : *Reading produces the same effect on the mind, as your partridges do on my cheeks.* (See this anecdote in Voltaire’s Age of Louis XIV. chap. 26.) This prince, after the death of Fenelon, burnt himself all the manuscripts which the duke of Burgundy had preserved of his preceptor. (*ibid.*) This was indeed the vengeance of an ignorant despot, who liked nothing but his pride, and abhorred the truth. Caligula wished to destroy the works of Homer, and actually burnt those of Virgil. I do not see much difference between that act and the conduct of Louis XIV. A king capable of such rancour would have been an Omar, had not the men of letters of his time shewn themselves flatterers without moderation and without shame. Louis XIV. patronized them for the sake of his vanity, like Dionysius the younger, tyrant of Syracuse, who used to say : *I keep philosophers and wits about my court, not from any esteem I bear them, but because I wish to be esteemed on account of the favour I shew them.* Accordingly the good offices of the French despot were often stamped with his ignorance and injustice.

(c) See Proofs and Explanations, note (I.) at the end of Vol. II.

Frenchman



Frenchman tried by his peers (d), enjoyed the privilege of exemption from imprisonment, under any pretence whatever, except in the case of a capital and notorious crime (e), and that since the annihilation of our national privileges, our princes have engaged, by formal laws, not to detain any of their subjects as prisoners longer than twenty-four hours without bringing them to trial (f).

These laws, which it was impossible to refuse a whole people, without avowing an intention of governing them on oriental principles, would never have restrained an absolute monarch, by nature haughty, corrupted by fortune and by flatterers, spoilt by an enthusiastic nation, urged on by violent ministers, and beset by intolerant and rancorous priests, since he made no scruple of tramp-

(d) Ibid. note (II.)

(e) Ibid.

(f) Under his own reign the rigour of the ancient ordinances were relaxed in this respect, and the famous declaration, published and registered the 24th October, 1648, says, *that no individual even in this kingdom can be kept in prison more than three days without interrogation.* This declaration was issued, it is true, at the beginning of the troubles in the minority of Louis XIV. but in this respect the parliament was rather feeble than seditious. It is well to recollect that such was the ministry of that day, that Emeri, the superintendant of the finances, dared to say, IN FULL COUNCIL, *that sincerity was only made for merchants, and that the Maitres des Requêtes, who urged it as a reason in the king's affairs, deserved punishment.* (See the Memoirs of Cardinal de Retz, who assures us that he *heard* this senseless and infamous speech.) It was under the same administration that Servien proposed in FULL COUNCIL to take away the counterpoison which the duchess des Lesdiguières had put into two small boxes for the Cardinal de Retz, then a prisoner in the dungeon of Vincennes, and to substitute poison, to be delivered immediately to the prisoner. (See les Memoirs de Joly.) How safely lettres de cachet were entrusted in such hands! What respect was due to a council which dared to deliberate on such opinions!!

ling under foot every thing repugnant to his will and pleasure, and used roundly to declare, "*that of all the governments in the world, that of Turkey or of Persia appeared to him the best (g.)*" Thus much however he might have comprehended, had he been acquainted with history, and the laws of his nation, that the right of arresting a citizen, under circumstances which render it probable he may insure impunity by his flight, and success to any dangerous project, and that of detaining him by a lettre de cachet, of depriving him of his liberty for an indefinite term, without proving his crime, and bringing him to a legal punishment, are two things essentially different in their nature.

It is probably from confounding these that many persons have looked upon the use of lettres de cachet as a legal exercise of the royal prerogative. The consequences naturally flowing however from this position afford sufficient proofs of its fallacy, for it involves in it the total destruction of property, and consequently of personal liberty.

For what property, in fact, can a man call his own, if not that of his person? What sort of liberty can he be said to enjoy in a country, where the laws give no security for his personal safety? Where the wanton order of a minister, issued not unfrequently without his knowledge, granted often on the simple solicitation of a vindictive great man, of a man of influence, of an intriguing female favourite, of a greedy subaltern, paid for his partiality, is sufficient to plunge a citizen into prison,

(g) *Lettres Persannes*, Letter 35. But, Sire, replied the Marechal de'Estrees to Louis XIV. *two or three emperors of those countries which are so well governed, have been strangled in my time.*

where

where he can receive no assistance from the magistrate, where he can derive no succour from the law, and in which no other term is fixed for his detention than the will of him who has ordered it, or rather of the person who has obtained the mandate? What is this but the compleatest despotism exerted to its utmost stretch?—But let us examine on what this pretended legality of arbitrary imprisonment is founded.

Length of possession, say the partizans of *Lettres de Cachet*, is the genuine sanction of all authority; now the right of imprisonment is a royal prerogative, which stands unimpeached from time immemorial. It is an incontestible rule of government, sanctified by innumerable examples. It is therefore a legal prerogative, and every challenge of its legality unjust.

The whole of this reasoning is built on a false principle, and the conclusions are consequently false. In the first place, all legislation derives its rights from the laws of nature, to which all positive laws ought to be subordinate, from the light of reason, the sole tribunal from which there is no appeal, from the public wish and concurrence, the real despot of every nation, and not from any usage of however ancient date; for an ancient abuse, is not less an abuse for its antiquity, nor can any prescription be pleaded against truth and justice.

Secondly, this prerogative has been at all times contested. The opinion of enlightened citizens, who have no personal interest in the support of an arbitrary system, the continual protestations of the magistracy would alone form the most solemn appeal against this practice. But if the right of such imprisonments be clear, why not consign it in a law,

law, instead of having recourse to a method so odious, as to incur the suspicion of partiality and injustice, even when employed in the punishment of the guilty? The only edict by which our kings have ever attributed to themselves the power of imprisoning their subjects at their pleasure; that edict, which violates at once the rights of the nation and of humanity, only speaks of "*removing citizens for a time from the usual place of their residence.*" But why this equivocal and insidious formula? Why, if this prerogative be immemorial, is this single edict of so late a date as 1705?

I will not here load the text with details which would become fatiguing, from the multiplicity and extent of the quotations. I have collected them at the end, to render the work less dry; but the following are the result of my researches.

From the earliest days of the monarchy, we meet with laws annulling every act, and every judgment founded on illegal and surreptitious orders. From the period of the barbarous codes, down even to our time, this doctrine is established by a written, continued, and uninterrupted tradition. Mr. de Montesquieu, however, asserts, that the *preceptions* of our first kings, were orders sent by them to the judges, to do, or permit certain things contrary to the law, from whence it follows, that the use of lettres de cachet, under another name, may be traced up to the very origin of the monarchy. "There are many established laws," says this illustrious writer, "but the kings rendered them of no effect, by certain letters, called *preceptions*, which over-turned those very laws;" they were, adds he, "nearly similar to the rescripts of the Roman Emperors, whether they were actually taken
" from

“ from them by the kings of the Franks, or
 “ whether they proceeded spontaneously from
 “ themselves.” (h) That great man was mistaken. Mr. Howard (i), and Mr. de Montblin (k) have victoriously refuted his opinion. The former in particular, has demonstrated, in his learned commentary upon Littleton, a work by no means unfavourable to authority, that *preceptions* were subject to the verification of the judges, and had no other object than to ascertain to them, that such or such demand had been approved by the sovereign, on a supposition of its conformity to justice, to the public right, and its being founded on a true state of the case, in default of which the judges were bound to declare *preceptions* null and void (l). There is no doubt, however, that they have been frequently abused, of which we are sufficiently informed by history, although the facts adduced by Mr. de Montesquieu are but very indifferent proofs. The Frank princes, the barbarous sovereigns of a barbarous people, committed many acts of violence, and which could have scarcely any other object than individuals, for the body of the nation being armed, it would have been no difficult matter to repel acts of general oppression. This is the reason, by the bye, why sovereigns, until they became possessed of the exclusive

(h) Chap. H. 1. XXXI. de *l'esprit des loix*.

(i) *Anciennes loix des François*, tome II. p. 10 to the 16th.

(k) *Maximes du droit public François*, tome I. part II. sec. II. of chap. III.

(l) The constitution of Clotarius I. of 560, expressly says; *quæ si quolibet impetrata fuerit (licentia) vel obtenta à judicibus, repudiata inanis habeatur et vacua*. Which proves alike the real object of perceptions, and the abuse that was made of them. See the notes at the end of Vol. II.

clusive power of the sword, rarely ventured to impose illegal taxes. The prince transgressed the law much more easily when his attacks were made on individuals. "The French," says the Abbé de Mably (m), "could submit even to some atrocious acts of violence from their chief, because they were conformable to the public manners; but a continued, regular, and systematic exertion of authority would not have been borne."—Much less would a tranquil and uncontroverted despotism have been practicable, such as is necessary in the exercise of arbitrary imprisonment. Sovereigns so dependent as they were, never gave surely a legal sanction to their atrocity, by compelling the judges to become their accomplices. I agree with the above able writer on jurisprudence, that the democracy on which the French monarchy was founded, degenerated very rapidly into aristocracy; it is no less certain that this aristocracy became inevitably despotic; but the Carolingian revolution soon proved that it was not in favour of the sovereign.

The Abbé Dubos, who, if he be not a venal writer, has had the ill fortune to incur the suspicion, by his constant subterfuges, his frequent falsifications, and his insupportable system, Mr. Dubos pretends that the Merovingian kings condemned the first men of the state to death, without its being necessary to bring them to trial in the legal form, and that if there have been some criminals tried in the national assemblies, it was unnecessary, and superfluous (n). One must be
very

(m) *Observations sur l'histoire de France*, tom. I. liv. I. ch. I.

(n) *Histoire Critique de l'établissement de la monarchie Française dans les Gaules*, liv. VI. chap. XVI.

very little acquainted with the free genius of the Franks, and the natural temper of all authority, which never voluntarily relinquishes its rights, to form such a conjecture, which is contradicted however by specific passages (o). The noblest monument of French legislation, the *PACTUM legis salicæ* (p), expressly says, that *the French shall be judges of each other, together with their princes, and that they shall ordain the laws together*. The most ancient of these laws (q). that of the Bavarians, on which Mr. Dubos builds his reasoning, after mutilating the text; that of the Visigoths, which governed a great part of Aquitaine, and which was of such authority as to have several of its regulations adopted in the capitularies of Charlemagne (r); that of the inhabitants of Burgundy, and that of the Germans; in one word, all the barbarian codes made by the interposition of the people; the constitution of Clotarius, all the capitularies, in short (s), prohibit arbitrary commitments, issued without a preliminary process, and without the conviction of the criminal, whose crime too must be proved by three witnesses, *so that the person accused cannot deny the charge* (t), *nor the law be violated by the weight of power* (u); and our first kings, as well as their successors, have

(o) See the notes at the end of Vol. II.

(p) *Pactum legis Salicæ*. Vide Baluze. See also the notes at the end of Vol. II.

(q) Lindenbrok, *Codex legum antiquarum*, p. 26, 406, &c.

(r) Liv. VI. chap. CCLXIX. & liv. VII. add. IV. chap. I.

(s) Baluze, tome I. col. 7, art. II. III. V. VII. IX. col. 24, 718, 910, tome II. col. 79, 101, 236, 269, 322, 359, &c. See note (I.) at the end of Vol. II.

(t) *Et exinde probatus negare non potest*. Loi des Bavares.

(u) *Non nunquam gravado potestatis depravare solet justitiam sanctionis*. Loi des Visigoths.

have declared that their authority would be annulled, whenever it was exerted in opposition to the law (x).

As to the two facts quoted by the Abbé Dubos, from Gregory of Tours, and which he brings in proof of his singular assertion, I shall only observe, that it is not very fair to convert acts of violence into general rules, nor very skilful to quote only two of them. Why does he not also reckon amongst the fundamental laws of our constitution, the form of the letters by which the Merovingian race took under their safeguard the assassins, whose business it was to serve them? Marculf has preserved them for us; but would these assassins have stood in need of protection against their judges, had the laws permitted the sovereign to massacre his subjects at his pleasure?

We well know that under the second race the regal authority was but too much diminished, and that France was torn to pieces by an anarchical aristocracy. But previous to these disorders, several capitularies stipulated to the French that they should never be despoiled of their rights, their dignities, or their liberty, neither by the will of the monarch, nor by any act of arbitrary power, but according to the law alone, and its prescribed forms, and that no sort of punishment should be inflicted on them by mere dint of authority (y).

Under the third dynasty, in proportion as order revived with a regular monarchy, numberless ordinances

(x) *Si quis auctoritatem nostram subreptitiâ contra legem elicuerit fallendo principem, non valebit.* See the capitularies of king Clovis I. in 560. Baluze, tome I. fol. 7. n. 5.

(y) Capitul. tome II. page 5; *ibid.* p. 46. Capit. of Lotharius, Louis le German, and of Charles the Bald. See also the texts in note (I.) at the end of the work.

dinances (z) formally prohibit the use of *close letters*, in the exercise of justice. The motives of this exclusion are supported by the strongest reasons, and are expressed in the most energetic language. Two of the wickedest kings, that the house of Valois, too fertile in bad princes, has given to France, have filled several ordinances with heavy complaints on the subject of letters, contrary to justice, which were continually obtained from them by surprize. Philip le Bel, that dreadful monarch who possessed the soul and the talents of a tyrant, and who wanted nothing but the power; Philip de Valois, who did almost as much evil, though with a less corrupt heart, compelled sometimes to appease the public murmurs, to allay the storms, which their crimes and faults were continually gathering over their heads, have expressly forbid all judges to obey their illegal orders, annulling all *letters to the contrary* (a). Philip de Valois went a step farther: he restrained a sort of civil inquisition, which, next to the use of *Lettres de Cachet*, such as it is now practised, would, doubtless, prove the most fatal proscription to the citizen. Letters containing a commission to take informations against such or such an individual, were obtained under the name of the attorney-general, and without his participation, and not unfrequently against even such officers of justice as were apparently too upright. This commission, entrusted to persons gained over by the enemies of the accused, authorized those
inqui-

(z) *Ordonnances du Louvre*, tome I. page 321; tome II. page 166, 217; tome III. p. 6, 15, 162; tome IV. p. 196, 318, 726; tome V. p. 323; tome VIII. p. 290; tome IX. p. 695; tome X. p. 123, &c. &c. See note (I.) at the end of this work.

(a) See the note (I.) at the end of this work.

inquisitors to proceed on such charges as might arise out of the information, by way of imprisonment, and by seizure of their property. The ordinance of December 1344, prohibited these secret informations, and sentenced whoever should obtain letters bearing such a commission, for the purpose of proceeding upon them, to a penalty, with costs and damages. The sole exceptions were in cases where the information should be made by the express order of the prince, by the authority of his court, or at the instance of the attorney-general himself, and these exceptions still left sufficient remains of the tyranny; but the citizen at least, prosecuted under these secret informations, could not be sent to prison without being heard. The judge, before whom he must be brought, was obliged to acquaint him with the charges alledged against him (b), to listen to his defence, and to decide on his discharge, or his provisional imprisonment. It is evident, that the present practice of Lettres de Cachet is no other than this ancient practice, stripped of every legal form, improved according to the views of an arbitrary authority, and rendered more expeditious, and better calculated to gratify individual hatred, and to ensure the safety of calumniators. Secret informations were submitted to certain judicial forms, since it became not only necessary that they should contain specific charges, and that these charges should be communicated to the person accused, but that they should receive their sentence from a judge. These troublesome restrictions have been long since lopped off, in place of which is substituted the signature, real, or counterfeit, of the sovereign and

(b) *Ordonnances du Louvre*, tome II. p. 215.

his minister. By means of this expedient *witnesses by brevet* (c), are become unnecessary, that is to say, false witnesses, paid by government, to depose according to its pleasure, such as were employed in the minority of Louis XIV. and doubtless on many other occasions ; but one fees, and we shall always see, wherever despotism prevails, spies, and informers, and an effectual inquisition, decorated with a milder name ; and it will always be on the reports of such men, branded with infamy as they are, that Lettres de Cachet will in general be issued.

Secret proceedings, checked by Philip de Valois, were totally abolished under his successors, all of whom, down to Louis XIV. inclusive, have laid the most formal injunctions on the judges, not to obey *lettres closes*, or *de cachet*, nor even letters patent (d), when contrary to the existing ordinances. They pronounce beforehand, the nullity of what magistrates may have been led to do, contrary to law, through apprehension of the monarch (e), forbid them to give way to the fear of displeasing or offending him, ordering them even, in certain cases to punish the bearers of illegal or-

(c) See the Memoirs of Cardinal de Retz.

(d) *Ordonn.* 23 March, 1302 ; December, 1344, art. 8 and 10 ; 14 May, 1358, art. 11 ; 27 January, 1359, art. 21 ; 22 July, 1370 ; 11 April, 1389 ; 27 April, 1408 ; April, 1453 ; 22 December, 1499 ; November, 1507 ; October, 1535, &c.

(e) *Injustum judicium et definitio injusta regiometu vel jussu à judicibus ordinata non valeat.* Capitul. Bal. tome I. p. 353. See also Capit. tome II. p. 5, 19, 202 ; tome III. p. 634 ; and a great number of similar texts in note (I.) at the end of this work, some of them even very recent, such as those extracted from the edict of 1616, under Louis XIII. and from the declaration of 1648, under Louis XIV.

ders (f). They restrain the use of *evocations*, (removals from one court to another, previous to trial), another species of arbitrary violation of the authority of the laws, to the sole cases provided for by the public ordinances, and authenticated in parliament (g); they promise to grant none of their own accord (h), and declare null, beforehand, all arbitrary *évocations* (i); they charge the conscience (k) of the magistrates to pronounce their surreptitiousness, and nullity (l), under pain of becoming themselves disobedient to kings, and violaters of ordinances (m); forbidding them to proceed any farther (n) in the information and judgment of suits, shifted from court to court, (*évoqués*) in an irregular manner (o).

It is evident from this, that our kings have acknowledged the injustice and fatal consequences of perverting the courts of law and judicial proceedings, by particular orders. The most terrible despots who have ever sat upon a throne, have acknowledged it as well as they. The edicts of the Roman emperors forbade judges to execute their rescripts, in whatever manner obtained, if they were contrary to justice; and enjoined them, as a general rule, to obey the laws in preference to private orders (p). It is true that there existed
one,

(f) *Edit.* of 1389. *Ordonn.* of 1402, 1560, 1579, and 1657.

(g) *Edit.* of January 1597. Fontanon.

(h) *Ordonn. de Blois*, art. 97.

(i) *Ibidem*.

(k) *Ordonn.* of 15 August, 1389.

(l) *Ordonn.* of December, 1344, art. 10.

(m) *Ordonn.* of 22 December, 1499.

(n) *Ordonn. de Blois*, art. 97.

(o) See note (I.) at the end, art. *Evocations*.

(p) See *l'Histoire du Bas Empire*, of Mr. Le Beau, edit. in 12mo.

one, eventually destructive of all the rest, which dispensed with their observing any of them, *so that they might never be under the necessity of doing any thing contrary to their inclination, or of not acting conformably to their wishes* (q). Our kings, however, have never formally arrogated to themselves such a prerogative; and is it not an odious and unworthy mockery of the royal majesty, to refrain on one hand from imposing silence on the law, or from restraining it by close letters, and on the other to bind the citizen in chains by these same letters? Do they change their nature from being addressed to individuals, rather than to the judges?

This reasoning may be pushed much farther; for the notoriety attending the remission of these close letters addressed to the public tribunals, gives a scope at least for the solemn remonstrances to the sovereign by the whole body of the magistracy, who may be able to undeceive him, and to turn the weight of his calumny against the calumniator, whereas *Lettres de Cachet* against the citizen, solicited and granted under the veil of secrecy, are fought for with less danger, and issued with less

12mo. vol. I. page 336, and the different texts of these laws, collected in the *Maximes du droit public François*, of Mr. de Montblin, tome I. part. II. chap. III. Constantine wished every person accused to be heard in the first instance, and that he should not be sent to prison before he had undergone a previous examination, if he gave room to suspect that he was guilty. (See Mr. le Beau, *ibid.* p. 341.)

(q) *Utique quibus legibus plebeivæ scitis scriptum fuit ne divus Augustus, Tiberiusve, Julius Cæsar, Augustus Germanicus tenerentur, iis legibus plebisque scitis Imperator Cæsar Vespasianus solutus sit.* (See Gravina de Imp. Roman.) This is the fragment of an act by which the same powers were conferred on Vespasian, as had been enjoyed by Augustus Tiberius, and Claudius. It was renewed on the accession of each emperor.

scruple.

scruple. These mysterious orders open a freer career for intrigues and calumnies, and expose authority, however well disposed, to be more frequently imposed upon, since the attempt is attended with impunity. Lettres de Cachet, in a judicial point of view, concern only in general, pecuniary transactions; arbitrary orders addressed to the citizen, attack his personal property, his liberty. The former take place only in affairs referred to the courts of justice; the latter may on all occasions introduce the most tyrannic despotism into the bosom of every family, and domestic circle, and prove alike oppressive to every citizen. They are, therefore, more dangerous and more fatal in their consequences than close letters, judicially employed; and the ordinances prohibiting the former, apply more forcibly to the exclusion of the latter, though not conceived in express terms, whether because the government regarding the prerogative of imprisonments and arbitrary exiles as the true *palladium* of its authority, has always thought proper to evade complaints until it found itself able to stifle them, or whether because Lettres de Cachet were for a long period very little used, and then applied only to extraordinary cases, and under the pressure of a real or supposed necessity.

Such are the examples offered us in the reigns of the Valois. The character of that family, which equalled in cruelty the Merovingian race, is very remarkable. We find in the castles formerly inhabited by these monarchs, many remains of the barbarity with which they treated state prisoners, whether criminals, or only suspected of criminality. These unfortunate wretches accompanied them in their journeys, and were lodged near their apartments,

ments. The dungeons still to be seen, says Mr. de Boulainvilliers, (r), in the castle of Blois, under the apartments of Catherine de Medicis, afford a certain proof of it. We find in the old precincts of the castle of Vincennes, begun by Philip Auguste, in what are called the Queen's Towers, and the Queen's Little Tower, built by Philip de Valois, four dungeons, of five or six feet square, where the beds and bolsters are of stone, and a large cave, to which there is no entrance but by a hole in the roof, so that this place may be rather considered as a sepulchre, than as a prison. Sometimes also, they made use of fortresses, as at present, such as the castle of Loches, where Louis XI. constructed two iron cages, in one of which was imprisoned ten years, and died, Ludovic Sforza, Duke of Milan, prisoner of Louis XII; the large tower of Bourges, where the same Louis XII. then Duke of Orleans, was shut up for three years, after the battle of Saint Aubin. The castle of Angers, where the Bishop of Verdun was put into a cage, he had himself constructed. Mezerai even goes so far as to say, that he was the inventor of that horrible punishment (s).

VOL .I.

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(r) *Lettres sur les anciens parlemens de France.*

(s) At most he was but the modern inventor of it; tyrants have at all times borne a striking resemblance to each other, and their art has been long since brought to perfection. We read in Seneca (*de ira*, l. iii. c. xvii. that Lyfimachus, one of the successors of Alexander, mutilated his friend Thelesphorus of Rhodes, and after cutting off his nose and ears, he fed him in a cage as an animal rare and remarkable in his species. "Add to these torments," says the philosopher, "those of hunger, of uncleanness, arising from his own excrements, in the midst of which he was suffered to rot; the callosities contracted on his hands and knees, which, from the straightness of his situation he was
"obliged

Every body knows that Louis XI. the Tiberius of France, as wicked, but far less able than the Tiberius of Rome, was one of the most ingenious gaolers and executioners that ever appeared on the too numerous list of tyrants, who have disgraced humanity. This prince put too death more than four thousand persons by different punishments, of which he used frequently to be the personal witness. Nero at least turned his eyes from the horrid spectacle; if he commanded crimes, he was never the spectator (t); Louis XI. counted the groans of his victims; he looked them in the face, and seemed to watch the different shades of their paleness. Almost all of those who perished by his orders, were executed without any form of process; some drowned with a stone about their necks; others precipitated from a *bascule* (of the same construction with the children's see-saw) whence they fell on wheels armed with sharp points and razors; and others smothered in their dungeons (u). This perverted mind meditated in one word, and glut-

“ obliged to use instead of his feet, the ulcers with which his body was covered, from the rubbing of the bars, &c. Deprived “ however as he was in this cage of the resemblance of a man, “ the monster who kept him there had still less of that resemblance.” Behold the horrid excesses of ferocity, to which despotism has hurried kings. (For the same fact, see Plutarch *de exilio*.) Thelephorus the Rhodian, replied to some one who advised him to let himself die by hunger: No, *as long as there is life there is hope*. But were that even the case, says Seneca (Epist. 70.) is life worth purchasing then at any price?

(t) *Nero tamen subtraxit oculos, jussitque scelera, non spectavit. Precipua sub Domitiano miseriarum pars erat videre et aspice, cum suspiria nostra subscriberenter; cum denotandis tot hominum palloribus, sufficeret sævus ille vultus et rubor, à quo se contra pudorem murebat.* Tacit. vita Agricol. 45.

(u) See Philip de Comines, Seyssel, Mezerai, Daniel, Bouainvilliers, Garnier, &c. &c. and even Mr. Duclos himself.

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ted his vengeance with an execrable gust. Mr. Duclos coldly asks (x), *What can have occasioned the satires spread* against a prince capable of so many horrors? and seven pages after that containing this strange question, he agrees, *that the severity of Louis XI. turned to cruelty towards the end of his life; that he was hasty of suspicion, and that to be suspected was to be criminal in his eyes; that he constructed cages to shut up prisoners, and forged enormous chains, which were called the KING'S FILLETS. It is said, adds the historian, that when the torture was administered, he was concealed behind a blind, to hear the interrogatories (y). Nothing but gibbets were to be seen in the neighbourhood of his castle; and these frightful marks every where pointed out the residence of the king.* Mr. Duclos is certainly very difficult in motives, if these are deemed insufficient to draw upon his hero the charge of tyranny. It was in 1468 that the admiral, receiving orders to put Dulau into an iron cage, told the king, *that if he was inclined to treat his prisoners thus, he might look after them himself.* This fact, reported by Mr. Duclos, proves that Louis XI. who did not die before 1483, was cruel long before his death. “As

(x) *Histoire de Louis XI.* edit. in 12mo, vol. iii. p. 462.

(y) Dionysius of Syracuse was still more refined in his cruelties. He had a quarry cut out in the form of a cone, or fluted, where he shut up his victims, so that he could hear all their discourse. This prison, which, as travellers say, is still existing, was called *Dionysius's ear*. The inventions of tyrants would form a curious collection; perhaps it might teach men to utter what the children said at Sparta; I WILL NOT BE A SLAVE. The mothers of these children lay in 'tis true, upon a buckler, and the Lacedæmonian Venus had a helmet for a head-dress, and held a javelin in her hand, instead of a branch of orange-tree. (Pausanias, l. iii. c. xv. and Antholog. Græc.)

“ for the Cardinal de la Balue, whatever Mezerai,
 “ and Father Daniel may say of it, I saw with my
 “ own eyes, says Mr. de Boulainvilliers (2), a
 “ dungeon of iron, in which he was shut up eleven
 “ years. The walls, the floors, the door, the
 “ small window, and even the chimney, are made
 “ of strong iron plate, and fastened by huge bars
 “ of iron. This dungeon is at Pleffis-les-tours, at
 “ some distance from the apartment where Louis
 “ XI. died, but under the first chambers of the
 “ Queen’s apartment, which are now in ruins.”

It was in 1469, and consequently fourteen years before his death, that this prince thus treated his prisoners. Six years before that death, too long delayed, Jacques d’Armagnac, Duc de Nemours, cousin-german of the king, after being shut up in an iron cage in the Bastile, having been tried and condemned by the parliament, without the assistance of his peers, Louis XI. ordered his children to be placed under the scaffold where their father lost his head, that they might be sprinkled with his blood. Let us search the annals of tyranny for a more atrocious action ! Mr. Duclos has preserved it in his history, and adds, that the king censured the indulgence of the judges, for suffering the Duc de Nemours to come out of his cage to undergo interrogatories ; that he ordered him to be put to the torture, and dictated himself the form of interrogation (a), yet

(2) *Lettres sur les anciens parlemens de France.*

(a) Tome iii. page 134. I shall remark, after Mr. de Boulainvilliers, in speaking of this celebrated trial, on the event of which Louis XI. was never able to appease his conscience, that the trial of the constable de Saint Pol, which happened also in this reign, *without the assistance of his peers*, although he filled the first office under the crown, and was descended from a house not only sovereign, but which had long possessed the empire, affords the

yet Mr. Duclos asks, *what Louis XI. has done to merit so many satires on his conduct!* Let us recollect too, the instance of the princes of Armagnac, who, buried in dungeons sharply pointed at the bottom, that their feet might find no support, and their bodies no rest, were dragged out twice a week to be scourged under the inspection of Philip Luillier, governor of the Bastile, and to have one or two of their teeth drawn at the end of every three months. The eldest of these princes lost his senses from this treatment. The youngest was fortunate enough to be freed by the death of Louis XI; and it is from his petition, presented in 1483, that we become acquainted with these facts, which it would be impossible to credit, or even to imagine, as Mr. de Boulainvilliers very justly observes (b), without so unequivocal a proof.

It is by such means, and by the multiplied perfidies in the history of his life, that Louis XI. far outstripped every tyrant who has borne the name of king. Thus Nero, fullied with every crime, boasted that none of his predecessors had known like him the extent of their power (c). Francis I. was in ecstasy at the reflexion of the happy revolution operated by the tyrant; and this shameful adage is repeated in our days, and books are written, dedicated to ministers of state, to prove that Louis XI. WAS A KING (d). Yes, and a very devout

the first example of a French nobleman falling publicly, in consequence of a judicial proceeding, by the sword of the executioner.

(b) *Lettres sur les anciens parlemens de France*, edit. in fol. p. 186.

(c) Suetonius, Ner. 37.

(d) "Louis XI. was very far from being without reproach. Few princes have merited such heavy ones. But we may say
"that

vout king, all covered with relics, endowing churches with an incredible profusion, praying to the saints, and to the Virgin (e), for the success of his crimes, and the destruction of his enemies, ordering all the bells in France to be rung at noon, and that every one should say his *Ave Maria* on his knees during this ceremony (f). But, say they, *he was equally celebrated for his vices and his virtues. . . .* Were that true, it only serves to render him the more odious, for if he knew his duty, and was able to fulfil it; if he had a sound head, and an enlightened mind, why did he so much evil? But this was not the case: Louis XI. possessed all the vices, and not one single virtue; not even one real talent of any kind. His policy, at all times odious, was constantly defective, his activity was turbulent, his mind feeble and superstitious, and his heart sullied with baseness and barbarity (g). If these be the characteristics of a KING, what is it that can constitute a tyrant?—But let us speak out. Louis XI. has greatly contributed to advance the edifice of arbitrary power; and here we find the true reason why Mr. Duclos and so many

“that he was equally celebrated for his vices and for his virtues, “and that, weighing every thing, he was a King!” This sententious phrase terminates the history of Louis XI. by Mr. Duclos.

(e) “At his knees,” says the good La Fontaine, who, in one of his letters of 1633, speaks of the tomb of Louis XI. at Cléry; “at his knees are his (heures) book of prayer, and his beads, the “hand of justice, his sceptre, his hat, and his notre-dame; I “cannot imagine how the statuary came to forget the Prévôt “Tristan.”

(f) This ordinance is of the 14th May, 1472.

(g) I shall again have occasion to speak of this prince in the course of this work; but if the reader is desirous of forming a proper estimate of him, he must read *l'Histoire de la rivalité de la France & de l'Angleterre*, by Mr. Gaillard.

pretended

pretended politicians have decided, that, *weighing every thing, he was a king.*

Mentiris, Dave; perge tamen: places.

From the reign of this prince of detestable memory, the use of lettres de cachet was moderated, until the hateful and infamous administration of the Guises and the Italians. But after *convenience* had been long concealed under the appearance of *necessity*, instances of this practice were so multiplied, that the will of the prince, or of his ministers took place both of *convenience* and *necessity*. The implacable Richelieu, the crafty Mazarin, the imperious Louis XIV. and the meek and pacific Fleury, who had neither courage nor address, but to oppress his own nation, whilst he dishonoured it abroad by his unskilfulness and pusillanimity, were the first who made use of arbitrary orders to the excess we now see them carried. We shall examine in another place the springs that have operated the revolution which has totally changed our constitution, our government, and our manners.

But, all these encroachments on the liberty of the citizen, are, after all, but the exertion of the right of the strongest, a right which it behoves Kings themselves to be cautious in admitting as a legitimate title. The laws which censure these abuses of authority, these laws recognized, and renewed by all our Sovereigns, are still in being. The only edict which in some measure sanctifies the arbitrary jurisprudence of Lettres de Cachet, is of the month of July, 1705 (h). It is Louis XIV. who speaks: "Of those whom he shall sometimes
" think

(h) Registered in parliament the 20th January, 1706. See the *Recueil de Pontchartrain*, p. 866.

“ think proper to remove for a time, by particular
 “ orders, from their usual place of residence, for
 “ good and just causes known to him, who, for-
 “ getting the submission they owe to his special
 “ order, quit their appointed place of residence,
 “ to withdraw out of the kingdom: he forbids
 “ such as are restricted by him to any part of the
 “ kingdom, to leave it without his permission,
 “ under pain of confiscation of body and ef-
 “ fects, on account of their formal disobedience,
 “ He wills that those who shall quit the place of
 “ their confinement, shall from that moment be
 “ deemed dead in law; he enjoins them to return
 “ immediately, otherwise their trial will take place,
 “ on account of their disobedience.”

This is the first monument of French legislation
 wherein the encroachments of despotism have been
 crected into a law, a law worthy of its author,
 Lewis XIV. who never for a moment lost sight
 of his arbitrary systems. I have already remarked,
 that this edict is only relative to *letters of exile*, and
 that they did not then dare to give, at least in
 point of right, any larger extent to this terrible
 proscription. It is no less true, however, that such
 a *law*, if it deserves that name, supposes that any
 order of the king, of what nature soever it be, de-
 mands a blind obedience; (which one cannot hear
 of without horror) that such an order alone creates
 or annihilates a crime; that it legitimates every
 outrage on natural right, or civil property: this
 odious edict, in one word, substitutes the will of
 one man in the place of all laws; and, rigorously
 carried into execution, would reduce every French-
 man to a true state of slavery, from the multipli-
 city of orders which attack the citizen.

The registering of this edict, at a period when
 the ordinance of 1667, and the declaration of the

23d February, 1673, had forbid the parliament the use of remonstrances, from which they abstained until 1715, when this right was restored to them; this registering, I say, whether free, or the result of force, proves absolutely nothing. Should *that company* be pleased at this day to register letters patent, by which the King should declare himself the proprietor of all our estates, and the absolute master to dispossess us at his pleasure, they might possibly render us an essential service: We should see at length, what we strive not to know, in spite of the various efforts of unskilful ministers to teach us better; the parliament however, by this conduct, would add nothing to the real power of the prince, and could make no alteration in our rights.

Let us lay secondary proofs and reasonings aside; it is of very little consequence to know whether the usage of lettres de cachet be or be not contrary to our public right, since that public right is crumbling to pieces on every side, and that we are truly a people without a constitution. The present discussion is only to prove that this practice does not necessarily involve the total subversion of liberty; for if it produces that effect, it can neither be legitimated by prescription, nor by any title in the world, since liberty is the unalienable right of human nature. Let us remount therefore to first principles, that we may answer once for all, those persons who accept the fact for the right; let us prove *that all legislation is founded on the law of nature, the light of reason, and the general wish and approbation*; whence it follows, that nothing repugnant to them can be lawful; for it is an incontestible axiom, that there can be no prescription against one's own right.

C H A P.

C H A P. II.

Principles of natural right. Formation of societies. The indispensable condition, of every human association. That respect to property, or justice, founded on natural sensibility, self-preservation and reason, peremptorily demanded by our nature, independent of every religious system, is the first tie that binds all men, and the sole point of union necessary to society.

MAN cannot be brought into the world but by the means of another man, nor can he be preserved without the aid of his fellow-creature, from the length of his infancy, and his own weakness. He naturally associates with beings of the same species, from the force of instinct, because, having experienced that he doubles his power, by making use of his two arms, he comprehends, that by multiplying them he must necessarily increase it; because also he is born in a family, and that from the union of one to the aggregate of several families there is but a short transition. But in whatever manner this association amongst human beings be produced, the object of each individual is to be able to resist those destructive calamities which are beyond the exertions of a solitary individual, and to satisfy more easily his daily wants. It is with reason, therefore, that the law of subsistence is said to be the law of nature, since on that is founded our very claim to existence.

But the power of satisfying our wants absolutely depends on our *personal property*, that is to say, on the

the perfect liberty of employing our powers, our time, and our means, in the research of what is useful. The property of our persons therefore is our first right, as it is our first duty to preserve and to defend it. Every association of men must be founded on this *duty*, and on this *right*. The contracting parties, so to speak, reciprocally ensure their rights, as an equivalent for duties, and those services by which they are reciprocally pledged one to the other; this tacit convention, which is not a social contract, as some philosophers pretend, results simply from the law of nature, and is the manifest intention of the associated persons, and their evident interest, since *man can do nothing but from number, is strong only from union, and happy only from peace.* (i)

Men, who would be the most wretched, and the most destitute of all beings, without the reasoning faculty, and society, which develops, perfects, and applies it; men alone, furnished with these two arms, endeavour to extend their possessions, and to multiply their enjoyments. Nature, unequal in her gifts, and the never-ceasing variety of circumstances, furnishes them with different resources to aid them in their pursuits. They are not all endowed with the same strength, the same understanding, the same talents. Hence, from the natural chain of events and opportunities, results the disparity of success, of benefits, and situations in society, (a just inequality, for it is founded on nature, and tends to the general good; a respectable inequality, when it arises from public gratitude): but they have all the same wants, and the organs necessary for supplying those wants.

A com-

(i) View of nature by the sublime Buffon.

A complete personal property or liberty is therefore the common right of all, since it is necessary to all, and because men in this respect are, and ever will be, equal; it is this which constitutes, or at least ought to constitute, the common measure of society. One of the principal objects of association is to restrain that sentiment which incites every man to multiply his enjoyments, from degenerating into avarice; to prevent the natural or accidental inequality, which gives some men so many advantages over others, from becoming oppressive; to oblige every man, in short, in every station, to respect the property of others. Such is, or ought to be, the end of all human institutions, which vary and multiply according to the various means of subsistence employed by more or less civilized and industrious societies. Men will live in communities, or will form permanent establishments; they will feed on the spontaneous productions of the earth, or they will become hunters and fishermen; they will raise flocks, or invent and bring agriculture to perfection; but the mutual attention to their respective rights will, in every case, be the necessary pledge of their union, which, notwithstanding the theory of some modern writers, depends more on moral relations, than on physical convenience, since the former are absolutely necessary to determine, to regulate, and to circumscribe the latter.

The precious instinct of sociability, or some other cause, (for I borrow from every system), has no sooner therefore united men in society, than *justice*, or *the respect to property* (k), becomes the

(k) The idea of *property* is imperfect amongst savage nations; but even people in the state of hunters, who enjoy the fruits of their

the first tie of their union, since they seek only the improvement of their condition, that is, the preservation and extension of their property. They are engaged to the society, only in as much as it increases and ensures their happiness, and affords them *property, liberty, and safety*. All men are interested in the support of justice; the strong as well as the weak; the *strong*, because they possess pre-eminence, and have consequently more to lose in the subversion of order, which would be followed by their total ruin, numbers supplying force; the *weak*, because provided with fewer means, and less power, they have greater reason to fear the violation of those conditions on which their security is built.

This is not a moral romance that I am here tracing out; I am not setting forth my private opinions, nor those of any particular author, I am developing the law of nature. Perhaps if I consulted only my own heart, I should content myself with appealing to every sensible and unperverted mind; and I should maintain, should even
prove,

their industry in common, have certainly a very distinct one; for each individual has at least his bow and his arrows: each of them knows very well also that he has the property of his person; and the attachment of the man of nature to his independence is the strongest of his passions. Besides, few savage tribes have been discovered who had not some beginnings of agriculture, which alone can furnish sufficient resource against hunger, that most terrible enemy of the man of nature. The learned and ingenious *Robertson*, who varies a little in the ideas of property he accords or refuses to the savages, admits, in his *History of America*, that the natives of Brasil, and almost all the American hords, are of opinion, that if any one has cultivated a spot of ground, he alone is entitled to enjoy its produce free from the pretensions of any other. This is the most natural, and perhaps even the most correct idea of property, and the basis of all justice.

prove, that justice, flowing from natural sensibility and self-preservation, is the natural voice of the soul, and that there is no where a greater theatre for virtue than the conscience (1). But the subtleties of metaphysicians, the active tricks of self-love, so to speak, have so obscured the natural light, and thickened the darkness of controversy, that this discussion would be long and painful, and perhaps superfluous, for no possible reasoning will impress moral goodness on the unfortunate man, in whom it is not a sentiment manifested by the internal voice of conscience, when his reason points out to him the just and the unjust, as well as a judgment acquired by the knowledge and experience of what is useful or injurious to him, if such a man can really exist. However that may be, it is enough for me to establish, that justice, founded on reason and necessity, is peremptorily called for by our very nature; and I think this truth is demonstrated by deducing the primitive notions of social order from the common wants of all men, and from their clearest interests.

It is here, let us not doubt it, it is here alone we find the principles of universal legislation, and the true moral code. It is a common observation, that if the Divinity does not exist, the bad only reason well, the good man is a fool. But why, if the good man be the most peaceable, the least agitated, and the best secured? "Virtue," says Rousseau, "is no more the love of order than vice. There is some moral order throughout every thing possessing sentiment and intelligence; the difference is, that the good man conducts himself with
" a re-

(1) *Nullum virtuti theatrum conscientia majus est.*

(Tusc. Cic. ii. 36.)

“ a reference to all, and the bad has no other object than himself. The latter makes himself the centre of every thing; whilst the former measures with his ray, and keeps himself at the circumference (m).” It seems to me that Rousseau, in this supposition, makes the bad man a fool; and no general proof can ever be adduced from a particular instance of folly. I doubt, without his head be turned, whether any man, except a despot, can be found so stupid as to imagine that he can become the centre of any system whatever. Every human being, furnished with understanding, feels himself incapable of supporting the effects of collected rays: by calculating his wants, and his individual powers, he sees that the latter bear no proportion to the former. He discovers his insufficiency in every respect, and constantly perceives that he is a very dependent being; from whence he concludes that he must make much of his fellow creatures. Will he employ artifice or violence to gratify his desires at the expence of those around him? From that moment he will become the enemy of all; their distrust awakened, their industry whetted, their anger roused, they will make a common cause against the offender, who must inevitably fall in so unequal a contest. Wick- edness therefore is evidently an error in calculation, as well as a perverted sentiment. There is an intimate connection between doing and receiving harm. This is demonstrable independently of any knowledge of the Great Being, and what is better, (for the strongest arguments influence more our opinions than our actions), it is proved by every day’s experience. Virtue, in a word, is, or is not,

not, arbitrary, and of human institution. It appears to me equally inconclusive, on either of these suppositions, to maintain, that man has no other check than religion. If virtue be founded on sentiment, and the unbeliever rejects the received opinions of the existence and worship of the Deity, only from an error of judgment, it by no means follows that sentiment is annihilated, because the judgment goes astray. If the respect we bear to virtue be no more than a political institution, built on its utility, that utility exists independent of the menaces and the promises of religion, and will be for the infidel, for the sceptic, and even for the atheist (n), what religious dogmas are for the profelytes of every mode of worship. Whether conscience be a sentiment, or an act of judgment, it always exists; it guides men with more or less certainty, accordingly as institutions well or ill combined direct the passions, which once excited to a certain point, will never be commanded, although it be very possible to render them subservient to the greatest degree of physical and moral happiness within the reach of humanity.

It is no doubt a great encouragement to virtue, that glory is its promised recompense; it is doubtless a high consolation, and a solid support, firmly to believe that all our actions are witnessed by an incorruptible and supreme Judge, infallible, and sovereignly good, at whose tribunal all human acts of injustice will be repaired, and good actions meet with a certain recompense. Theism therefore is the most sublime, the most useful, and most
affecting

(n) I do not apply this to the *impious man*, for he is faithless, and consequently a corrupted man, capable of violating the natural, as well as the religious, law, which he affects to despise, whilst his heart belies him.

affecting speculation to which philosophy has ever raised the mind. But this admirable and simple doctrine, never was, in all its purity, the religion of any people. The bulk of mankind, who must have machines, have constantly mixed it with gross modifications, with absurdities always senseless, and often fatal, whereas the principles of natural morality, rendered intelligible to all, working powerfully on all by the mouth, and the protection of the laws, expose society to no danger, and suffice to convince us that the true love of ourselves and of order are the same; that this order, founded on justice, or the knowledge and respect due to every human relation, is the order good for all, useful and necessary to all, and not confined to any individuals; that nothing, in short, can be good for any individual, which has not for its object the interest of the whole. Justice therefore is independent of any notions of the Deity (o). Virtue therefore has a solid basis, and justice

VOL. I.

D

tice

(o) "Let the philosophers wander," says a modern writer, who, after labouring in the cause of despots, has given a dissertation on justice, when the government appeared to cherish that morality; "Let the philosophers wander, who strive to discard from their reasoning every thing that compels them to bring them into contact with a superior and commanding power. Without that, they will doubtless prove to me that it is my interest to be just; without that, they will never be able to demonstrate that justice is my first duty." (*Les devoirs du Prince réduits à un seul principe*, page 23. Here is a very great error asserted in a very doctoral tone; and it is to a king that he speaks so lightly of philosophers, from whom alone he could learn the truth. No, Mr. Moreau, no; it is not from metaphysical discussions, nor from theological treatises, that these rustics will learn what is, or what is not, just. This will not even be their catechism, which they certainly understand as little as yourself. Theirs is their upright and simple consciences; their ease, their happiness, and wholesome laws. And if the laws are oppressive, if the people are wretched, and trampled under foot, it will be the *Marchauffée*, and not the fear

tice a real end, in our own interest, that universal guarantee of our respective engagements.

If it be objected to me that men frequently swerve from the principles of that justice which I think so evident, and that they do evil, knowing well what they are doing, which seems to prove that natural morality of itself is insufficient to induce them to the practice of good, this difficulty will recoil on those who start it ; for religion possesses no check of sufficient force, to render it unnecessary for society to have laws for the maintenance

fear of hell, which will restrain them, But it is precisely because I am convinced that it is my real interest to be just, that I shall look upon justice as my first duty, even though an urgent desire should stand in the way of that duty. For if I reason, I know well that my most active desires are often opposed to my interest, whatsoever pleasure I might have in gratifying them. Alas ! do we not every day see persons with weak stomachs, in spite of the keenest appetites, restrain from ailments they could not digest ? Gluttons, I know, cannot resist, and, in the same manner, wicked and impetuous men give way to their passions ; but exceptions are no proof, and the very common punishment of intemperate and bad men will only confirm the good and the temperate in their principles of justice and sobriety. An expanded and cultivated reason, in a word, will ever be the most powerful bridle of the passions. *Pridie caveat, ne faciat, quid pigeat postridie.* This is the compass to direct all human beings. *Nocet empty dolore voluptas.* This is every true voluptuary's creed. I will not trouble myself with transcribing trivial epigrams against priests and devotees of every sect, as you address your stale invectives to philosophers ; but in truth, it is pretty generally believed, that their suggestions have oftener led men astray from the paths of justice, than they have conducted them to it.

— *Quod contra sapius olim
Religio peperit scelerosa atque impia facta.*

(Lucret.)

As for the rest, this work of Mr. Moreau, by which he thought to reconcile himself to honest men, is one of those wherein truth is the most basely betrayed, and the most servile flattery bestowed on despotism. If this versatile writer, apparently incapable, like
many

nance of good order : (p) thus far we are upon an equality ; but it would not be difficult perhaps to prove that our arguments are not equal, and that the advantage is on the side of the sectary of natural morality, whose inflexible practice, after all, is no unworthy homage of the Deity, and is calculated to encourage well-disposed minds on the subject of their doubts and scruples ; for what is more noble, than to celebrate, through the medium of justice, that sublime reason which presides over nature ? (q) Let us enlarge upon and examine these ideas to the bottom, at the risque of a digression : the importance of the subject alone would plead my

D 2

excuse ;

many other men, to be either good or bad when his mask is taken off ; if this writer, I say, sometimes renders homage to justice by some vague and general maxims, and common-place remarks without any meaning, it is because he is sure to compensate for it the next moment, and to be restored to favour with authority, by the most infallible methods of application. I had originally intended to refute his principles, which are very often false and dangerous, always ambiguous and wavering ; but to do this, it would be necessary to re-examine, sentence by sentence, the whole of his insipid work, and to say the truth, Mr. Moreau is not worth that trouble. See relatively to the subject I treat, the whole of his chap. v. part 1.

(p) It is a very common mode of reasoning on religion, to beg the question. If the passions, say they, urge an interest nearer and more direct than the general utility of justice, and a man thinks he may gratify this momentary desire with impunity, how will you restrain him, if not by the idea of divine justice ?—What then ! do you really think that the fear of God's judgments, in similar circumstances, would moderate a man full of passion ? I appeal to continual experience. It appears to me, that to give the most satisfactory answer to such as doubt whether a man can be virtuous without religion, one has only to enquire, whether a man with religious principles can be vicious ? For if religion alone constitutes virtue, how will he go astray from it ? And if virtue be independent of religious opinions, why should the sectary of natural morality be incapable of it ?

(q) Hymn of Cleanthes, the Lycian, the second founder of the Porticus. We are indebted to Stobæus for the preservation of
this

excuse ; but sacerdotal despotism is too strictly connected with civil despotism ; and the combination of religious precepts and political principles has done too much harm to mankind, not to justify the discussion in this work.

C H A P. III.

That the foregoing principles are independent of every religious system, and that it would be of great service were this truth generally admitted. Sacerdotal despotism a necessary cause of civil despotism.

THEOCRACY seems to have been every where the first government. All legislators have had recourse to the interposition of heaven to make themselves more powerful ; and *Themis was always seated by the side of Jupiter* (r). Hence

this sublime fragment. See the translation of it in the beautiful essay. *Sur les éloges*, de Mr. Thomas. *All injustice*, says Zeno, *is an impiety.*

(r) “ Alexander, lying in his tent, was deploring the murder of Clytus, The philosopher Anaxarchus came to comfort him, and told him : *that Themis was always seated near Jupiter* ; to prove that every thing is just and allowable in kings upon the earth. Flattery no less mean than cruel, which, to heal vain regrets, invites to new crimes, by stifling remorse. “ by this fiction the ancients only meant to shew us, that Jupiter himself cannot *command without justice.*” (Plut. *of the necessity a prince has of instruction.*)

the

the confusion of civil and religious matters : whoever offended the legislator, offended at the same time the gods, his inspirers and protectors. In return for this protection, the legislator avenged the gods, with whom he had contracted so useful an alliance. As religious worship becomes more complicated, and as interests multiply in every nation, this alliance is become more intimate, and all governments have, in this sense, been theocratical, since they have all had an essential interest in diffusing the belief that the Deity presided in a particular manner over their administration ; thus they have maintained and favoured superstition, and have possessed themselves of the priesthood (s). We already discover, and shall soon see more at large, in what manner the theocracy has introduced, propagated, and strengthened despotism. Let us take a rapid view of the arts by which she has whetted the dagger and lighted the torch of fanaticism, that fell tyrant, who shews his frightful

(s) *Resumpta per arma dominatione, fugas civium, urbium everfiones, fratrum, conjugum parentum neces aliaque solitæ regibus ausi superstitionem fovebant ; quia honor sacerdotii, firmamentum potentiæ assumebatur.* (Tacit. hist. l. v. 8.) From one end of the globe to the other, it is superstition that has introduced and consolidated despotism. The American nations alone, which had renounced the independence of nature, had been thus subjugated. (See *History of America*, by Robertson, *passim*.) The Caciques made their Manitous, their Theutès, and their Cémis speak as they thought proper, and imposed tributes and offices on the people in the name of these divinities. The Mexicans, the most superstitious nation of the new world, was also the most enslaved. The despotism of Peru, as absolute as it could be, was a genuine theocracy. If it was very mild, it was because this good and simple people did not adore a god fabricated by the priests ; but the sun, to whom one can attribute nothing but beneficence ; and also, because the religious tenets of the Peruvians, and their civil government originated in the same head, and that it was the interest of Mancocapac to make his people happy. He wished to be absolute ; but not to reign over wretched slaves.

head

head amidst the clouds, and whose horrid aspect from on high makes mortals tremble : (t) that destructive monster, who, by ridding man of shame, the most powerful check that nature has bestowed on him, enslaves his opinions, subjugates his conscience, intoxicates his reason, fascinates his sight, degrades him below the savage beasts, which do not destroy each other but for the gratification at least of their own passions, and leaves the almost unperishable seeds of discord and intolerance in the bosom of nations.

If the establishment of a religion be necessary to the organization of society, an order of priesthood is almost a necessary consequence. Mr. de Montesquieu observes, that the people who have no priests are in general barbarians. It is not difficult to discover the reason of it. The first arts amongst all the nations of the earth have been those of domination and cupidity ; thus we remark, that that of jugglers and of priests is one of the first branches of industry in all rising societies, an art founded on the ignorance, desire, hope, fear, and curiosity, common to all men, though exercised with a greater or less degree of energy, and under various shapes. In every country in the world the art of divination, that of medicine, and of superstition have been in strict alliance ; and the invariable result has been fanaticism and slavery. These are not systematical ideas, they are the best attested facts in the history of man. Observe in the forests of Germany, and above all, amongst the Americans, and the people scattered throughout the Pacific ocean, the different periods of society, and you will find that such is the uniform progress of

(t) *Quæ caput à cæli regionibus ostendebat,
Horribili super aspectu mortalibus instans,*

(Lucret.)

See the preceding note (s).

all human institutions (u). There were never wanting individuals amongst the most savage people, who knew how to profit by the weakness of their fellow-creatures; and if some hords are without priests, their barbarity does not arise from the want of persons amongst them to exercise this trade; it is because their barbarism or their stupidity is so complete, that the business of a priest is not yet lucrative amongst them (x) Be that as it may, wherever there is public worship, there is the

(u) The Eureses and the Galls were regarded by antiquity as the most ancient priests. We see them gloomy, fanatics, jugglers, fortune-tellers, physicians, &c. Pliny (hist. nat. l. xxx. c. 1.) observes, that the Magi held mankind under the triple chain of religion, medicine, and astronomy. Such was the opinion entertained by the Persians of the knowledge of the Magi, that no one could reign in Persia who had not been educated under them. *Rex Persarum nemo poterat esse, qui non ante Magorum disciplinam scientiamque percepisset.* (Cic. de nat. Deor. l. 1.) The power and policy of priests were the same in every country, more especially when, as in Egypt, they formed a distinct community, and exercised a jurisdiction. (See *l'antiquité dévoilée*, tome I. l. ii. chap. 2.) Who is ignorant of the terrible despotism of the Druids, who, to use the remarkable expressions of Dion Chrysostom, (disc. 49.) *reigned amongst the Gauls, where, amidst the éclat and splendor of the throne, the kings were in fact only the ministers and executioners of the pleasure of the priests.* This passage, which, as the learned and ingenious Mr. Grosley remarks, has escaped Mr. Duclos, establishes very well what that writer has advanced in his memoir on the Druids, that their government was an aristocracy exclusive of all royalty.—In the new world also the Alexis, the Piayas, the Autmoins, the Buhitos, and the other priests were soothsayers, conjurors, doctors, &c. and were in the greatest credit. The miserable inhabitants of *Terra del Fuego*, and in general of those parts bounded by the South Sea, are superstitious, and believe in evil genii, whose influence their priests, who are also their physicians, occasionally invoke. Examine all histories and all countries, and you will find, that in the greatest nations, as well as in the smallest tribes of savages, the priesthood has invariably the same origin and the same policy.

(x) The first men, we are perpetually told, were the first kings and the first priests in the bosom of their own families.—Are fathers

the priesthood to be found, since the worship that establishes superstition on a regular and permanent system is the work of priests.

It is of infinite import to society, that the ministers of the altars should be so circumscribed in their profession, as to render it impossible for them to mix intrigue and ambition with their zeal. This is the only means, if there be any, to deprive their priesthood of all influence over the civil jurisdiction, with which it ought to have no relation whatever, that can free it from the most strict dependence; otherwise, priests, always enveloped in the sublime darkness of religion, the representatives of the gods, clothed with their power, entrusted with their vengeance, and the insidious and formidable rivals of all authority, will combine every method of usurpation, will become the judges in their own cause, and make all men the slaves of superstition, and bring them prostrate at their feet.

But this reflection of the philosopher, who, meditating on his historical knowledge, on the gene-

thers then immortal? and who succeeded the first king in this family? In like manner, to suppose that people should themselves attain those abstract ideas on which natural religion is founded, who will dare to assert that the first notion of the Deity leads to the establishment of the priesthood, and that the first worship was any other than the simple adoration of each man? The priesthood and royalty are TRADES, arising, like all others, from the increase of society, formed by the union of a great number of families. This fertile and infinitely important truth has been strangely perverted, because man always neglects observation for speculations. The noble, but very false, idea that the regal derives from the paternal authority, leads directly to despotism. The father gives every thing, the king receives every thing. Fathers have made their children, the people have made their kings, &c. &c. &c.—I do not discover the slightest resemblance; but I perceive every moment how dangerous it is to apply metaphysical reasonings, vague speculations, and logical abstractions, so to speak, to the practice of human life.

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ral nature of things verified by events, traces effects to their causes, how can he present it to ignorant, simple, and unexperienced men, so indolent in reasoning, as to be totally incapable of it, who are subdued by terror and astonishment, by hope and fear, by promises and by threats, by commanding them in the name of heaven, by overwhelming their feeble reason with dogmas incomprehensible, and consequently the more imposing, and swallowed the more greedily as the grossest arts are employed to establish them, proportioned nevertheless to the genius of the profelytes, and of such efficacy, that there is no example of their failing in their effects, even in the hands of the most unskilful operators? Priests necessarily acquire therefore the greatest ascendant over the people. Inspired legislators, all-powerful mediators between God and man, they bind and blind him with the bandage of opinion: they dictate laws to him, which extend and consolidate their power. Greedy and encroaching, from possessing readier means of aggrandizement, they disseminate unremittingly the absurdities of superstition, and very soon its horrors, to augment their prerogatives and their riches.

Such was the origin and inexhaustible source of that intolerance which has set the whole world in combustion. Each preacher has found it his interest to decry and ruin his rivals, regarding them as so many copartners in the recompense he had promised himself from his pious frauds. Hence all those excesses of jealousy concealed under the mantle of zeal; hence that hatred, which is always more virulent between sectaries of the same religion, than between the followers of modes of worship totally different from each other; for the narrower the separation, the more they are afraid of its being easily overstepped. Avarice and the lust
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of power, after degrading and enchaining mankind by the most senseless bigotry, have called in to their aid fanaticism, when they have seen their slaves ready to break their chains. This contagious poison, diffused into every heart by the skill of the priest, under the sacred mask of religion, infected whole communities. Human depravity attained its last period : ambitious leaders urged on, and guided blind and furious instruments of their avarice. Artifice was succeeded by violence. Interest, which invented the former, and was the prime mover of the latter, threw every thing into combustion, the credulity of the people, and the passions of the great, furnishing inexhaustible fuel for the conflagration. Whole nations, intoxicated with rage, tore each other to pieces with their own hands ; pillage, desolation, and all the horrors of intestine broils were amongst the smallest excesses of religious wars, and were the crimes of every party ; all the ties which bind men together were dissolved : objects of pity as well as of horror, at once pious and barbarians, treacherous and faithful, adorers of a God of peace, and enemies of human nature ; hiding from themselves the sentiment of their crime by the merit of their motive, the father was seen combating against his son, brother murdering brother, and to give, in one word, the most frightful idea of the horrible delirium to which men may be transported by religious zeal, the magistrates, the guardians of the public weal, the judges of the citizens, sanctified, by solemn decrees, these massacres and murders (y).

(y) An ordinance of the month of July, 1562, permits the killing of Huguenots wherever they are found. (De Thou. l. 30.) This ordinance was ordered to be read every Sunday from the pulpit of every parish.

But

But let us turn our eyes from the hideous picture of the fatal effects of the activity of priests, and those hatreds they choose to call religious. If ecclesiastics, perhaps, had been reduced to pray to their God, to carry him our homages ; if, from the commencement of their order, certain bounds, and a temporal revenue had been assigned them, independent of their industry, and apostolic labours, they might not have had recourse to those stratagems which have produced the sacerdotal despotism. Having less interest in persecution, they might have tolerated the different sectaries the more patiently, as the liberty granted to the innovators would have been a perpetual guarantee for the tranquillity of the ministers of the ancient worship. But so wise and impartial a conduct was, and ever will be, incompatible with religious enthusiasm. They who invoke around them the vengeance of heaven, will always fascinate the eyes of vulgar men ; and audacious preachers, tormented with a dropical thirst, greedy of wealth and power, in proportion as they become richer and more powerful, will employ all their skill, activity, and authority, in combating those who attack their golden harvests by broaching new opinions. Persecution becomes their natural and almost unavoidable weapon of defence. They precipitate themselves towards intolerance, for toleration would check their ambition, diminish their wealth, and divide their power ; besides that they never play so distinguished a part as when they persecute (z).

If

(z) All the prelates of France, consulted by Louis XIV. answered in the *affirmative* this question—*Is it right to force a people of heretics to believe ?* They had forgot, doubtless, the following beautiful

If the earth, strewed with the carcases of a hundred millions of men, who have fallen by the sword of fanaticism, sufficiently attests its fury; if Europe is still smoaking with the fires that consumed it; if superstition be the most cruel scourge of humanity, and the most terrible weapon in the hand of tyrants; if the union of religious authority and the civil power has produced the most formidable despotism, whilst their quarrels have given birth to the most horrible dissensions (a); if mistaken zeal, the more dangerous, as it assumes the appearance of duty, has made men capable of the most frightful excesses; if true believers, a prey to religious terrors that enervate the soul,

beautiful expressions of a father of the church. (St. Hilarius in Constant.) "God has taught us to know him; he has not compelled us to it. He has given authority to his precepts, by making us admire his divine operations. He wills not a forced consent. Were violence to be employed to establish the true faith, the doctrine of episcopacy would rise up against this abuse, it would cry out: God is the God of all mankind, he has no need of an obedience without liberty; he receives no profession disavowed by the heart: the question is not to deceive him, but to serve him." Such were the sentiments of Athanasius, and of many others. They had been persecuted, it is true, by the Arians, whilst the bishops consulted by Louis XIV. were, on the contrary, the strongest, which made them persecutors. Noailles and Tellier deserve to be recorded, because they alone condemned that abominable and sacrilegious tyranny. Fenelon was dead. Bossuet, the ardent, the haughty, the ambitious Bossuet, thought with all the French clergy, and the world had a compleat proof of that terrible truth, that the priesthood will never be reconciled to philosophy.

(a) Montesquieu says, in defending religions against Bayle: *If I chose to point out all the evils produced in the world by civil laws, by monarchy, and by republican government, I shall utter frightful things.* (*Spirit of Laws*, lib. xxiv. chap. 2.) But must not this great man have made a double use of terms, had he not associated religions with governments in this satire? Does not a great part of the evils they have produced proceed from the combination, or the discord, the confederation, the union, or the ill defined limits of the two authorities?

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render the heart callous, and sour the character, give way the more readily to their passions, because their doctrines admit of the more easy expiations ; if, in a word, it be only too true, that humanity has derived no great advantage from the acts of piety of any religion whatsoever ; that the people the most devout combine the blackest and most odious crimes with the most fervent practices ; and that, amongst the bulk of mankind, virtue is in the inverse ratio of the rigour of these observances, the charge must fall on those who professionally foment superstition, who dictate other than the social duties, or who pervert the order of society, who recommend, in preference, religious acts, and teach mankind that they will supply the want of morals, who have every possible interest to establish this wicked doctrine, and possess all the necessary power exclusively to maintain it. We dare to pronounce, it were in that case to be wished that no man professed a religion which made it necessary to have a sacerdotal order ; that mankind would forsake those observances, which are absolutely independent of virtue, nay, even of religion, since the most abandoned villains have often been the most ardent in expressing this fervour ; since absurd modes of worship furnish the most striking instances of this sort of zeal ; but which gives false notions of justice and of virtue, which are the source of illusions equally capable of throwing a veil over bad, and of burlesquing good actions, which introduce all kinds of superstition, and the pious pride resulting from it, and intolerance, that incurable and contagious malady, engendered by self-sufficiency, and that servility of heart and understanding which intolerance exacts, and the despotism it compels : for despotism, religious or speculative, infallibly introduces civil and political despotism : for if the temporal power be
separated

separated from the ecclesiastical authority, it is necessary at least for a religion that suffers no contradiction, to be under its protection. It is evident then that arbitrary strokes of power are necessary to maintain exclusive opinions. Should the spiritual jurisdiction know no bounds, the civil power, which gives it a coactive force, will set none to the exercise of its executive power; thus religious, necessarily introduces civil tyranny. By an inconceivable magic, if the deliria of self love, the contagious effects of enthusiasm, and the excesses of cupidity, could ever afford matter of astonishment, the religious tenets admitted by the bulk of mankind, as a tradition they have never even examined, have the power of exciting them with more violence than the defence of their civil liberty, whilst in the ordinary transactions of life their spiritual concerns have so little influence on their conduct in comparison with their temporal interests. The sovereign, who, by embracing one party, declares himself openly against the other, soon converts enthusiasm into fury, and theological hatreds degenerate into revolt. His fatal partiality compels him to restrain and punish, with the most inflexible severity, the innovators who attack his authority, as well as his religion. Every other expedient short of violence then becomes impracticable; the establishment of toleration itself, should he be tempted to recur to it, is impossible; for all parties, irritated alike by the outrages they have committed or received, oppose it with equal animosity. There is now no other remedy to be expected but from the excess of the evil, and the exhausted state into which the rage of civil wars, and the anarchy which follows them, have brought the nation, which has no other chance of extricating itself, but by falling under the iron sceptre of a despot, whom it is no longer able to resist.

Let

Let us hence conclude, in spite of the clamours of zealous devotees, and officious critics, who always confound, or affect to confound, the cause of authority with the men who exercise it; let us conclude, I say, that for practical good we must depend on the perfection of legislations, the wisdom of the laws (b), the vigilance of the magistrates, and the encouragements given to knowledge, which will spread that great and immutable truth, that it is the invariable interest of man to be just; for according to the ingenious and profound observation of an ancient (c), when a bad man derives some profit from his crime, that profit is only an earnest of the misfortune that hangs over him, *and wickedness herself drinks the principal part of her*

(b) Religion operates on us only by employing the same springs with the laws; by the dread of evil and the hope of good; but the laws have this advantage over her, that they greatly approximate the objects of that fear and that hope; which render the pleasing or terrible illusions arising from them much more powerful. Men every day sacrifice a greater, but more remote advantage, for a present benefit; and this erroneous calculation is the inexhaustible source of their mistakes, their faults, and their crimes. If this be too frequent in the ordinary transactions of life, even when events, capable of undeceiving them, by bringing repentance and punishment, are not very distant, much more will this be the case, when the restraining menaces are only to have effect at a remote period, which men always flatter themselves is immense, though it may happen to be very near. If men had even the most perfect internal conviction, nay, the physical certainty of the rewards and punishments of religion, still would they produce but little effect on them against present attractions. Motives purely human are therefore the surest and most immediate springs of actions. The people of Florence, in the time of their excesses against the nobles, used to say: *Ought the remote fear of hell to counterbalance the immediate fear of the dungeons and death with which we are menaced?* and thus they animated each other to glut their vengeance. (See Machiavel, hist. de Florence, liv. III.)

(c) Menander.

own venom (d). Alas ! how can such pure and such sublime morality be dangerous ? Read history ; were the stoicks ever bad citizens, those men, whose creed it was, that the exertion of all their talents and all their time was due to human society ; those men, whose sect gave Antonine and Marcus Aurelius to the world, as if to console it for the tyranny under which it had groaned so long, and in some measure to absolve human nature from the crime of the Cæsars ? The stoicks admitted the doctrine of fatality, a principle evidently destructive of all religion. Almost all the great men of antiquity (e) denied the immateriality and immortality of the soul, or at least the doctrine of rewards and punishments after death, the only tenet peculiar to religious doctrines, which can contribute to the interest of nations. And have they for this rendered less service to their country ? What society can require more from the members who compose it ? Is there any prince who hopes to govern

(d) Senec. Epist. 81.

(e) I say, *almost all the great men*, for notwithstanding the unanimous opinion of the learned, I am far from being convinced that the ancients had no idea of the immateriality of the soul ; it seems to me that several of their philosophers came very near it ; and as Mr. La Grange remarks, Lucretius, who combats this opinion in the third book of his poem, would not probably have exerted himself with so much energy against a gratuitous supposition of his own invention. In other respects, every thing that the ancient philosophy has said on the subject, is very confused and contradictory, and I do not believe that any body will impute that to it as a crime, even after reading the Descarteses, the Leibnitzes, the Wolfs, the Baumgartens, the Reimaruses, the Mendelssohns, &c.—*Nobody*, I say except the theologians, who, as we all know, are ignorant of nothing, and doubt of nothing. As for the immortality of the soul, several ancient philosophers have allowed it ; but it is well to remark, that statesmen in general looked on that opinion as more dangerous than salutary, and that some of them, amongst others Ptolemy Philadelphus, proscribed it.

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men more just than Aristides, more virtuous than Socrates, more devoted to their country than Cato? Confucius, who, if we credit the accounts we have of him, was the only philosopher perhaps of the human race, who employed reason to spread his doctrine, Confucius, who for more than twenty centuries has been the object of the veneration and worship of an innumerable people, whose benefactor he was by his morals; in whatever quarter of the world heaven had given him birth, would he have been deemed a citizen deserving punishment or contempt? Confucius and his disciples deny the immortality of the soul; the partizans of the religion of Fohé are of a contrary belief: consult the history of China, and travellers; compare the morals and the manners of the two sects, and decide which is the most useful and most honourable to that empire. Search in the annals of the world, if it was the partizans of natural religion, the philosophers, those philosophers so persecuted, so loaded with invectives, so hated by priests and tyrants, and all those who dread the truth (f); search if it was they, or the ministers of religion and their proselytes, who sacrificed human victims, who sentenced their fellow-creatures to hemlock or the flames, for speculative opinions, whilst their altars afforded an inviolable asylum to the most atrocious villains, as if the protectors of assassins owed no indulgence to heretics; as if the greatest outrage of which men are capable against the Supreme Being, if it be true that he deigns to concern himself about the insects which are stirring on the earth (g),

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were

(f) *Ænomaüs* threw amidst the priests who were explaining the oracles, a book intitled: *The impostors discovered*. This has always been the crime of philosophers!

(g) What emotions of pity must that being feel, who, from the centre of the great whole, or of our system only, viewing our
almost

were not to persecute in his name, to arrogate to themselves the title of his avengers,—they, his feeble creatures! to pretend to do honour, by destruction, to the Author of every thing that exists! See if they were the philosophers who mutilated tender infants for the service of the altars, who permitted What do I say? who excited the barbarous avarice of parents to furnish these unhappy victims for the temples! See if they have ever authorized the most horrible of all tyrannies, THE TRADE OF MEN (h); if they have ever made solemn decrees to make it criminal in a slave to attempt to break his chains, as if to violate the liberty, the natural rights of man, who holds them, no doubt, from that God who gave him his very being, were not to disobey that God, and, as far as depends on us, to set ourselves in opposition to his will! See if they have armed the West against the East, one hemisphere against the other, if they have massacred one half of the human species to compel the worship of a God of peace; if the crusades, the proscription of the Albigeois, and the Vaudois, St. Bartholemew,

almost imperceptible planet floating through space, should say: Behold the point where so many atoms arrogate to themselves the empire of the universe, yet they who intoxicate themselves with this absurd pretension, are only the slaves of other atoms like themselves, and these tyrant atoms ravage with fire and sword this little globule of matter on which they wander; and amongst them all there is nothing great but their wickedness. *Hoc est punctum quod inter tot gentes ferro et igni dividitur: cum te in illis verè magna fusiuleris, quoties videbis exercitus sub rectis irrevexillis, libebit dicere: it nigrum campis agmen, formicarum iste discursus est in arborantium.* (Sen. quæst. nat. præf.)

(h) Las Casas, the so much boasted Las Casas, from a contradiction, worthy of pity, if not of horror, proposed to comfort the Americans by substituting *Negroes* for the culture and service of the colonies; and his abominable project was adopted. Thus did this zealous man condemn the Africans to slavery, to solace his favourite Indians, Africa was oppressed and depopulated, and America was not more happy.

mew, the gunpowder treason, the Irish massacres, the assassination of so many kings, the desolation of the new world, are the production of natural morality, and her sectaries ! Reflect, in short, on the infinite variety of theological opinions, which have had currency amongst men in all ages, and in every nation, on the multiplicity of controversies agitated between different sects, and even in the very heart of each of them ; you will doubtless admit, that it is impossible for one man, however learned and laborious you suppose him, to be thoroughly acquainted with all these systems, the nomenclature of which is of itself a study ; this task then greatly surpassing his powers, how much more is he incapable of discussing the principles and tenets of each particular sect, and of deciding between them ? Now if a man wholly devoted to study is lost in the abyss of hypotheses and disputes, were it not the height of madness to expect that a whole people, in general very ignorant, drawn off by numberless occupations, incapable of the slightest methodical reasoning, should be able to undertake such an inquiry ? What tyranny, to force a people exclusively to adopt one of these systems, contradicted by an infinity of others, without having been able either to study or comprehend any of them ! And what absurdity to imagine that these contradictory doctrines can make us just, and organize societies !

The following, if I do not strangely deceive myself, is the inevitable consequence of this simple deduction. The practice of moral good is the only obligatory religion to which man can justly be compelled (i). Reason, which points out to

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him

(i) Some partizans of toleration pretend that atheists have no right to it, *because they enervate all human laws, by robbing them*

him the partial and general advantage resulting from this practice, is the sole guide indispensably necessary to his well-being. The principles of moral good being founded on the general interests of humanity, and on those of each individual, they are absolutely independent of every religious system ; and if we do not impute to natural morality the disorders which introduce into societies the bad laws and superstitious institutions that change or destroy them, the tyrannical governments which place the particular and general interest in opposition to each other, and surround man with dangerous and fatal prejudices, which disfigure and enslave him ; if we search only those principles, in short, which are essentially necessary to tranquility and universal good, we shall find them the same amongst all human beings ; and it is on this solid and unperishable base that society must rest, and not on those shifting sands, which are perpetually heaped

of the force they derive from the divine sanction. This is presuming on the very fact in question, and I think some of my ideas may assist in deciding this question against the partizans of such a principle. *Atheists*, say they, *leave only a political and frivolous distinction between what is just and unjust.* But why *frivolous* ? As to the *political* distinction, it is that alone which interests government, and which it is its business to look to. Mr. de Romilly, whom I am here refuting, agrees, that errors purely speculative are indifferent to the state.—They are so ! Let us reason fairly then, and recur to fir principles. The magistrate has only a right to punish actions, and if he may punish atheists for their principles, the same will hold good as to every other opinion. Civil toleration therefore is null if it be not universal. A bill was offered to the parliament of England against atheism ; the famous Lord Peterborough opposed it, and said, “ I am for a parliamentary king ; but I will not take a God from parliament, any more than a religion. If the house is determined to have one of that sort, I will go to Rome, and endeavour to be made a cardinal ; because in treating of such matters, I would rather have a seat in the conclave, than amongst your lordships.” (*History of England by Smollett.*) This saying has the air of pleasantry, but is very profound.

heaped up and overturned by every gust of passion.

It is from princes, it is from their ministers, it is from conquerors, it is from persecutors, and from despots, that we must exact the firm and sincere belief of another life, and of an Almighty Being, the Supreme Judge of their conduct, the inexorable avenger of public outrages, still more than of private crimes, who will demand from them a strict account of the use they have made of their authority and their power. This consideration might operate possibly upon the hearts of the great, inaccessible to remorse, but open to the impressions of fear. But, unfortunately for mankind, they who have the power of doing great mischief are not afraid of any judgment. An obscure citizen, if he believes not in a God, the rewarder of good, and the punisher of evil, knows at least that he will escape with difficulty from the severity of the laws; and when the civil police shall be administered with vigilance and integrity, few men will dare to brave its punishments, or even infamy, (did the legislature know how to employ this great spring), (k) since no man could hope for impunity. But to plunder and oppress a whole people, is not this a much greater crime than to rob an individual? To massacre thousands of men, and to keep in pay one hundred thousand accomplices of these murders, or to commit one, can these crimes be brought into comparison? These however are the pastimes of those, under whose orders are the magistracy, and the public safeguard. When a religion shall arise which shall restrain these enormous crimes, and whose primary laws shall be the fundamental notions of justice, which

(k) *Think rather, says one of the ancients, of making the blood mount up to a man's face, than of drawing it from his veins.*

shall

shall extinguish that thirst for blood (l) and wealth that preys on the ambitious, which shall never cease to claim the unalienable rights of the human species, to which all institutions should be subordinate, under pain of being virtually null, and criminal in fact ; when the ministers of this religion, meriting indeed the name of holy, shall give kings *ideas of peace, and, above all, of their people's comfort, of moderation, and of equity, of diffidence for harsh and violent counsels, of horror for arbitrary acts of authority* (m) ; when they shall teach men, with the disinterestedness of virtue, and with the courage inspired by truth, the immutable principles of all legitimate and prosperous society, the rights and the duties of all, without exception of rank or person ; philosophers worthy of that name, will prove themselves the most zealous and most enthusiastic preachers of these benevolent doctrines to which humanity will owe its happiness. Until then, indifferent to every theological system, enemies of every mode of worship which arms the powerful, and depresses the weak, their religion will be that toleration which unites mankind. Until then the genuine citizens will think that it is in the interests of humanity alone that they must look for the principles of justice and of all legislation, the limits of authority, and of obedience. This is the only method of *accommo-*

(l) St. Ambrose publicly reproached Theodosius, as we know, for the massacre of Thessalonica, and commanded him to expiate that crime. I do not know another instance of this kind, to add to that celebrated example ; and even St. Ambrose pronounced the funeral oration of this very prince

(m) These are the very words that Fenelon wrote to Madame de Maintenon. Such a director must very soon be persecuted and disgraced ; and he was so.

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dating governments to men, and not men to governments, as has been hitherto the case, without excepting the most courageous and most respected writers on politics and jurisprudence (n).

(n) I except from this reproach the *History of the two Indies* of Mr. Raynal, one of the works that do the most honour to the present age. *Mankind had lost its titles, Montesquieu has found them, and restored them to it*, says Mr. Voltaire, who has not always treated this great writer so favourably. I think this reflection very false. Mr. de Montesquieu, in his *Esprit des Loix*, has shewn himself circumspect even to timidity. He capitulates throughout with priests and kings. Often, very often, he sacrifices natural to positive right. Respect to human prejudices made this illustrious and respectable philosopher waver in that career of legislation he was so capable of traversing with a hardy flight; and if he has recovered our titles, it is but too true that he has restored to us only the smallest part of them.

C H A P. IV.

Collusion of the two authorities, ecclesiastical and civil. Justice, the common source of all human relations, is the foundation of the reciprocal rights of the people, and of sovereigns, whatever be the origin of the different governments established amongst mankind.

IF justice be, as we have proved, the common source of all human relations, and the necessary result of our primitive wants, the privileges of the governors and of the governed are founded upon it, whatever be the origin of the authority established among men. This, therefore is an imprescriptible title, by whatsoever means it may have been violated or evaded ; for violence or artifice may destroy, or disturb the possession, but never can annihilate the right. I have already observed that my principles are applicable to every system.

Shall we, in effect, admit the divine emanation of all authority ? All power, you will say, proceeds from God ; it is consequently above all human inspection. Its will is its only, and legitimate title. It commands, because such is its mission, its destination, *its pleasure*. And thou, who thrown naked at thy birth into the world, wouldst still have remained naked as thou then wert, had not men stronger, more expert, more useful, and more valuable than thyself, taken care of thee ; thou, who gavest the first signs of life in cries and tears ; thou, who in spite of nature, wert bound up in bandages from the moment that thou sawest the light, haughty sovereign of men, destined to command them, but subjected to the same miseries

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as the whole human race, thou foundest thyself tied hand and foot, soon after thy birth, venting thy groans, and thou vainly thinkest thyself born for power, for pride, and despotism ! oh pity ! oh folly ! (a)

God gives every thing, since to him we owe our life : God gives every thing, since nature is but his work and instruments. God, in giving them birth, bestows the crown alike on the lawful king, and on the usurper. He sends a Charles the first to the scaffold, and raises a Cromwell to the summit of greatness, since it is he who directs or permits all these events. But are we to conclude from thence against the rights of men who have received them from his bounty ? Are they not the second necessary causes of the establishment and the overthrow of thrones ? Kings then depend more on them, than they on kings. In a word, all power either proceeds, or does not proceed from God : Cromwell's authority was, or it was not, legitimate. If it was legitimate, there are then cases where a legitimate power may justly be overturned ; for I do not know that the restoration of Charles II. has ever been imputed as a crime to Monk ; and perhaps the only defect in this great man's glory,

(o) *Principium jure tribuetur homini cujus causa videtur cuncta alia genuisse natura, magna sæva mercede, contra tanta sua munera ; non sit ut satis æstimare parens melior homini, an tristior nocverca fuerit ? Ante omnia, unum animantium cunctorum alienis velat opibus : cæteris variè tegmenta tribuit. . . . Hominem tantum nudum, et in nuda humo, natali die abjicit : ad vagitus statim et ploratum, nullumque tot animalium aliud ad lacrymas, et has protinus vitæ principio Ab hoc lucis erudimento quæ ne feras quidem inter nos genitas, vincula excipiunt, et omnium membrorum nexus : itaque feliciter natus jacet, manibus pedibusque devinctis, flens animal ceteris imperaturum, et à suppliciis vitam auspicatur, unam tantum ob culpam, quia natum est. Huc dementia ab his initiis, existimantium ad superbium segenitos. (Plin. Nat. l. VII. in proem.)*

was

was not to have carried his project into execution in the life-time of the usurper. If the authority of Cromwell was illegitimate, all power then does not flow from God, or is legitimate, and beyond all discussion, because it proceeds from him.—Ye valiant champions of absolute authority, descended in a direct line from heaven, of that authority, which is only accountable to God, of that authority, to which we owe an indispensable obedience, although unjust and tyrannical—answer this question, but weigh well your answer. . . .

What ! is it not unanimously admitted that kings hold their sceptre and their sword from God ? —Unanimously ? Yes, by your slaves of the sword and of the gown.—That proud Paladine, whom the meanest of his servants could level with the earth, thinks he holds, *by his sword*, the absolute dominion over twenty millions of men !—But let us understand each other : is it from God or your sword that you hold your power, or from both ?—From them both, undoubtedly : God gives me every thing ; my sword ensures every thing to me.—Blasphemer ! God stands in need of thy sword to make himself obeyed ! Thou callest his power to thy aid, and armeest thy feeble insolence with the sword ! It is thus that thou renderest the Almighty, and consequently the infinitely Good Being, the accomplice of thy ambition, thy caprices, and thy fury ! Or rather, senseless as thou art, it is thus, that by invoking the right of the strongest, thou makest the right of nations a revolt ; it is thus thou authorizest every enterprize against thyself.

These are the consequences of that impious adulation which says, that KINGS ARE THE REPRESENTATIVES OF GOD ON EARTH. It has introduced the sword into theological disputes, and the lightning of heaven into political systems ; the two authorities have mutually assisted each other in subjugating

ing the body and the mind ; they have exacted implicit obedience, and participated the DIVINE RIGHT OF TYRANNY. Such is the result of the perfidious collusion between the sacerdotal body and the civil power, and it was thus that this terrible confederacy was formed :

Force made conquests, and conquerors made laws. Superstition soon inspired the tyrant with fear ; she alarmed him with her terrors to partake of his tyranny ; she lent him her support ; she made a god of the conqueror, and of his subject a slave ; she availed herself of the fire of lightning, the rolling of thunder, the trembling of mountains, and the groanings of the yawning earth. Here she fixed horrid places of residence, and there happier abodes : Fear created her demons, and a feeble hope her gods ; gods full of partiality, inconstancy, passion and injustice, and whose attributes were rage and vengeance ; such in short, as were naturally the creatures of cowardly minds. Were their hearts tyrannical, theirs were tyrant gods : then zeal, not charity became their guide. Hell was built on hatred, and heaven founded upon pride : then the roof of heaven ceased to be sacred ; altars of marble were raised, and bathed with blood : Priests glutted themselves for the first time with living food, and soon soiled with blood their hideous idol : they shook the earth with the thunder of heaven, and clothing themselves with the omnipotence of the gods, they made use of them to crush their enemies (p).

Such is the history of the priesthood, and the despotism it has produced. Thus did self-love, limited to one only, without regard to what is just or unjust, and having no other code than its pleasure, open to itself the career of arbitrary power ;

(p) Pope, Essay on Man, p. 3, of the French translation.

but

but this same principle diffused throughout all is the source of government and of laws ; for if what one desires, is desired also by others, what will avail the will of one man against many ? It is, or will be sooner or later, destructive of despotism ; against which all ought to make common cause, as the only means of preserving what each man possesses, or of recovering what each has lost, and of guaranteeing the common safety against tyranny, which is constantly endeavouring to introduce, or to extend itself, which orders every thing in the name of God, enslave every thing by the sword, and opposes man alike by prejudices or by force.

But let us overturn in one word these impious sophisms. All authority emanates immediately from God, say you. I ask if you thence conclude that the whole human race were formed to be the sport of a few individuals, and that the whims of one single man are more sacred than the interest of a whole people ? Will you answer in the affirmative ? Every thing may be, and is said. I will not lose my time by expressing my resentment at your position. I feel that you are a monster ; but sentiment is not a demonstration. I will content myself with proving therefore that you are senseless.

When God created men, it was his pleasure they should exist. Existence is inseparably connected with subsistence : we cannot subsist without satisfying those wants implanted in us by the Author of our being : the bodily faculties we have received from him are evidently destined to satisfy our wants, and our understanding to aid us in this labour : the property of our person is the indispensable implement of it ; that property therefore is unalienable and sacred : it cannot be torn from us without causing our destruction : to attack this right is to attack our life, which God takes from us when it is his pleasure : the law of this property,
or

or what amounts to the same thing, the law of liberty then is a divine law : sovereigns, before whose inauguration there apparently existed other men, sovereigns then are instituted by God, who is *terrible above kings*, to make justice reign upon the earth (q).

One word more : all power proceeds from God ; with all my heart : it is sacred ; I admit it : absolute ; agreed : irresistible ; that is proved by every day's experience : invincible ; it is there I was expecting you. What will you do, if we all say NO, when you say YES ? You must bend no doubt, or you will break. You are then dependent, and under the peremptory subjection of a law. Behold this law : you reign over us only by combining our wills with yours ; but you will find it very difficult to make us will a palpable evil : you will never consecrate in our hearts manifest acts of injustice, or the caprices of tyranny : that you may preserve your power therefore, we must imagine ourselves interested in its preservation, we must think it necessary to our own : that we may be attached to you, you must give us proofs of a reciprocal attachment (r) : your interest therefore goes hand in hand with your duty : from both of these considerations it is necessary for you to be *just* : we shall see in a moment what you stand engaged to by this obligation. Let us proceed.

If

(q) *Dei enim minister est in bonum.* (Roman. xii. 14.) *Quoniam cum essetis ministri regni illius, non rectè, judicastis, nec custodistis legem justitiæ, neque secundum voluntatem Dei ambulestis, horrendè et citò apparebit vobis. . . . Potentes enim potenter tormenta patientur.* (Sapient. vi. 4, 7.)

(r) When Mary de Medicis lay in of her first child, as soon as the dauphin was born, Henry IV. overcome with joy, made more than two hundred persons enter the queen's cabinet to see her. The midwife was out of humour ; but the king, tapping her

If legislators have had recourse to the intervention of heaven (s) to render themselves more respectable,

her on the shoulder, said to her ; *Hold thy tongue, hold thy tongue, midwife, don't vex thyself ; this child belongs to all the world, every body should enjoy the sight of it.* How well this affecting speech came from the good Henry ! *He knew that a king belongs to his people.*

(s) It is hardly credible the pains taken by authority at all times to inculcate these ideas, how ancient they are, and to what a remote date those fables remount, with which we are the most seriously abused at this day. Homer tells us in his *Iliad*, (lib. i. v. 238.) that kings receive the laws and justice from Jupiter ; he adds, it is true, to keep them inviolable, on which Plutarch makes this beautiful reflection : (*in Demet.*) "He has honoured with the glorious title of friend and disciple of that Supreme God, not the most warlike, not the most unjust, not the most sanguinary, but the most just of kings." (*Vide Homer Odyss.* v. 178.) Royalty has been at all times consecrated by august and religious ceremonies, *which approach it in some measure to the Deity.* (*Vid. Plut. in T. & C. Gracch.*) Kings, as delegates of the gods, have at all times possessed the supernatural gift of curing certain disorders by their touch. (*Vid. Plut. in Pyrrh.*) &c. &c. Let us consult history, in short, or the traditions of all nations. Osiris received from heaven the art of agriculture, and thus became the legislator, the sovereign, and even the god of Egypt. Amasis and Mnevis gave laws from Mercury in the same country. Jupiter dictated those of Minos, and Ceres those of Triptolemus. The oracles seconded Lycurgus and Solon. Minerva inspired Zaleucus and Pythagoras ; the god Confus guided Romulus ; Egeria counselled Numa. Zoroaster governed the Persians in the name of Oromases, and Zalmois, the legislator of the Hetes, commanded them in the name of Vesta. Brama received the doctrine he taught in Indostan from the invisible Master of the world. Even the rustic Saxons claimed their descent from their god Woden. Thor and Odin, legislators of the Visigoths, modestly pretended to be gods themselves. Every thing in Mahomet, even to his epileptic fits, bespoke the divine character, and Gengis Kan called himself the son of the sun. Manco Capac and Mama Ocello Huaco, his sister and his wife, announced themselves as such to the Peruvians. See how from one end of the globe to the other, men have bent under the yoke of superstition. Confucius is perhaps the only legislator who has not degraded morality by his frauds, and who sought no other title of respect from men than what

pectable, and their pretended mission a purely political invention, we shall find the same inference from the inquiry into the reciprocity of rights and duties, and the necessity of justice ; for what could be the object of those who have set these springs in motion ? To accustom men to a social and tranquil state of order wherein the chiefs should have the pre-eminence. It is only by making their fellow-creatures happy, and maintaining them in peace, that they may hold the comfortable and sure possession of their authority. It is only by rendering them essential service that they are able to establish or at least maintain it. “ Does any man,” says the respectable author of the history of the commerce of the two Indies (t), “ doubt of the happy effects
 “ of beneficence and humanity on savage people,
 “ let him compare the progress made by the Jesuits
 “ in a very short space of time in South America,
 “ with what the arms and the ships of Spain and
 “ Portugal have been able to effect in two centuries : whilst thousands of soldiers converted two
 “ great polished empires into deserts of wandering
 “ savages, a few missionaries have converted some
 “ little wandering tribes into several great polished
 “ empires.” The object, the interest, and the business of every government therefore, are to maintain the harmony of society established on the moral relations of justice, and on natural order,
 which

what arose from the merit of being useful. But it must be observed that we have not one work of Confucius of undoubted authenticity ; and even taking such as we have for authentic, it must be allowed that the Chinese philosopher is but an indifferent moralist, by no means to be compared with the great geniuses of antiquity.

(t) Tome III. l. IX. edit. in. 8vo. Maestricht, p. 336.

which no human power can change (u), and to protect all the members of this society.

Admit every supposition, the result will be the same. A profound study of history proves that the original contract is a chimera. If you admit it however, it must be agreed that men have made conditions with those to whom they have delegated their authority. Those people, who have treated their chief the best, have granted him an authority revertible to his children. There is no sentiment more natural than the love of one's own family, whence arises the notion of inheritance, which has been able to extend itself to the conveyance of authority, notwithstanding the infinite distinction there is between a deposit and a property. It is very probable however that this idea occurred sooner to the understanding of princes than of subjects. Nations must have thought that it was absurd in the first instance to restrict themselves in the choice of their sovereigns to the order of succession, when the children of their chiefs, from their age or inability, were incapable of governing. They might even have carried their fears farther; for the inheritance of a crown must introduce despotism the more easily, as it attacks *public spirit* by the allurements of interest, and makes individuals very readily forget that they are citizens before they become subjects. Thus, whilst action is continually augmenting on the one hand, by the successive efforts of a family, which naturally pursues the same system of aggrandizement, the force of reaction is diminished, and perishes at length on the

(u) Hibeas said to Antony: *If you can draw two tributes from us in one year, you can give us also two summers, and two autumns.* (Plutar.) This saying is full of sense. When man can vary the seasons at his pleasure, he may make laws; until then he can never change the physical laws of nature, from whence moral laws derive, without suffering for it.

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side of the most numerous, and consequently the weakest party, because it is divided ; and the compact is no longer binding but on one of the contracting parties, that is to say, the people. To these might be added a thousand other reasons, and I am not at all surprized that, amongst the Mammelucs, the children of their kings are wholly excluded from the throne, more especially if they are educated like most of our European princes. But more profound reflections, the experience of the evils attending elections, when society became so numerous as to allow of many candidates, and the neighbouring nations had an interest in corrupting the electors, have changed ideas. It has been construed into good policy to interest the prince in the welfare of his kingdom, by making it in some degree his property, and to quench the passions of the ambitious, by raising a barrier between them and the crown. This is a wise system : nay, it would have been perhaps the wisest of all, had the nation reserved to itself the exclusive right of directing the education of its princes ; but they are unfortunately abandoned to bad preceptors, and left near the throne where every thing breathes vice and cupidity. The remembrance of the progressive ideas which induced nations to accept of hereditary chiefs is obliterated, from the facility with which men adopt the received usages, without enquiring into their origin, or reflecting on their causes. They have forgot that the right of sovereignty, residing solely and unalienably in the people, the sovereign neither was, nor can be any other than the first magistrate of the people ; that the right of inheriting the crown was the gift of the nation, and that it can for that reason be changed or restricted by the nation ; that royalty could not continue to be hereditary, but under restrictions, since a whole people had not the power

to devote itself, much less its posterity, to misery, to the oppression, to the tyranny, to the caprices of a fool, to the outrages of a madman. Subjects, as well as princes however, have brought themselves to believe, that the inheritance of the sceptre is a right independent of the people, a gift of God, an acquisition of the sword, every thing, in short, that can be imagined by the most servile flattery, and the delirium of pride ; it is notwithstanding a fact, not the less simple and incontrovertible, that men can only bestow what they possess, the right of doing and ordering just actions, conformably to order, and to the immutable laws of nature ; and that the delegate, above all, cannot prescribe against his constituent.

Is all government, in short, derived from violence, from usurpation, and from conquest ? (which appears to me difficult of belief, for something must have preceded usurpation.) The consent, the tacit consent at least, to this government, and of course its legitimacy, can only take date from the moment of its becoming just. That is indisputable ; for the submission must have become voluntary from the lapse of time, since if the contrary were true, the authority would infallibly have been overturned, the nation being more powerful than its oppressor (x), the whole greater than its part ; and man being incapable of remaining under the yoke longer than the necessity lasts which compels him to support it (y). But this combina-

(x) I remount here to the origin of things. I speak not of those times, when despotism, having brought her system to perfection, which, supported by regular and standing troops, rivets those chains it is so difficult to break, as long as it continues to keep some terms with us, and oppresses with moderation.

(y) *Haud credi potest ullum populum in ea conditione cujus eum perireat diutius quam nec esse sit mansurum.*

(Tit. Liv.)
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tion of the general will with that of one or several individuals, arises doubtless from the conviction of its being useful to obey. What can be this utility?—It is the maintenance of public and private tranquillity, and the security of property, that is, in other terms, political and civil liberty placed under the safeguard of a tutelary authority. *Mars is the tyrant ; but Right is the sovereign of the world (z).*

Without founding human liberty on the abstract combinations of metaphysics, which an illustrious modern has called *the experimental philosophy of the soul*, but which is frequently no more than its romance (a), without hunting for our titles amongst the obscure vestiges of antiquity, it is evident then, that independently of every national privilege, of all written law, every citizen has a right to the protection and the justice of the sovereign (b), nor can either individuals or governments be happy, as Plato says, without justice, which is the retribution of this common good to all. Usurpations on this right, which is natural and prior to all legislation, can never be legitimate acquisitions. The primordial title may be set aside, and man restrained, troubled, and interrupted in

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(z) Timotheus. Pindar said : *Right is the king of the world.* (Plut. in Demet.)

(a) Mr. D'Alembert says too, that metaphysics *ought only to be* the experimental philosophy of the soul ; and he ascribes to the wise Locke the glory of having applied it to its genuine destination. See the preliminary discourse of the *Encyclopedie*, a production which will live as long as philosophy, and which alone would suffice for the reputation of a philosopher.

(b) This is the solemn oath pronounced by our sovereign at his coronation. "I profess and promise," says he, "before God and
"his angels, now and hereafter, to procure and preserve, to the
"best of my power and knowledge, to the holy church of God,
"and to the people under me, *law, justice, and peace*, in the man-

"ner

the possession of his rights ; but they can never be annihilated. Let us draw the natural conclusions from these premises.

“ner we shall judge the best, *in the council of our faithful*, saving “ what respects the proper use of mercy.” *Profiteor & promitto coram Deo & angelis ejus, admodò & deinceps, legem, justitiam, pacemque, sanctæ Dei ecclesiæ, populo qui mihi subiecto, proposse & nosse, facere & conservare, salvo condigno misericordiæ respectu, sicut in consilio fidelium nostrum melius in venire poterimus.* (Cérém. Franç. p. 22.) This is the oath, which, from his own confession, constitutes him king :—PROFITEOR. Has not nature, in giving him life, made him the subject and the child of his country ? With this title alone, can he ever dispense with the duty of loving and serving that mother, to whom he owes so much ? This, without doubt, is what is meant to be recalled to his recollection by these beautiful words, addressed to him on his consecration : *Ego dominus fratrum tuorum, & incurventur, antè te filii matris tuæ.* Be the lord over your brethren, and may the children of your mother prostrate themselves before you. (Cérém. Franç. p. 45.)

C H A P V.

Origin of the right of punishment. Distribution of the judicial power. The exercise of justice absolutely incompatible with arbitrary orders and imprisonments. They are more formidable to political liberty, more cruel for the individuals who suffer them, than every other species of vexation, and even than sanguinary violence.

MANKIND have submitted to authority only to receive *justice*. Every citizen has a right to demand it from the established government; but according to the immutable principles of the law of nature, the basis of all society, one man cannot judge another man; for he neither has, nor can have, any right of jurisdiction over him.

But here we must not confound the right of jurisdiction with the right of availing ourselves of all equitable means of ensuring our own happiness, and of preventing others from disturbing it. This unquestionable right results from the duty of taking care of our own well-being; man possesses it in all places, and at all times. He preserves it in the midst of society in all urgent cases where the succour of the laws would prove inefficacious from their delay; but this right has nothing in common with that of judging. I should bewilder myself in perpetual digressions, did I attempt to anticipate all the sophisms, all the vain subtilties, which may be used to prop up a bad cause.

The power of administering justice belongs evidently to men united in society, for the purpose of maintaining the natural rights of each individual, who would be unable to preserve them without the aid

aid of his fellow-creatures. It belongs to the social body to decide whether one of its members has declared himself the enemy of his associates by his crimes ; whether he has merited expulsion from the society, or to be punished by it, and to lose the protection it has engaged itself to secure only to the just, and to such as will oppose no obstacles to the welfare of their brethren. The right of jurisdiction (c) possessed by society flows from its duty of protection : but it is necessary to entrust with some of its members the power of judging, to render the exercise of it practicable. In monarchies, one man is in general the depositary of this authority, that is to say, that he has the right of erecting tribunals to administer it in his name, (which is no other than that of the nation collectively taken) according to the established laws of that society ; for it is impossible, and would be absurd, for him to exercise in person the judicial power in civil affairs : it would be unjust, and even tyrannical, for him to be the judge in criminal matters, since he is the public plaintiff in all crimes, and appointed to prosecute them by the social body, which has delegated to him its right and powers for the execution of the laws. In every action submitted to the judicial power, there must necessarily be three parties : *the plaintiff, the defendant, and the judge.*

(c) I say the right of jurisdiction ; and I am sensible of the details it is necessary to enter into to fix with precision its extent. It would be necessary to beat down and to rebuild the whole edifice of human legislations. I think, for example, with the Marquis de Beccaria, and some other philosophers, that society has not the right of life and death, and that the prince, who only holds this power from it, commits a *crime læsæ majestatis Dei*, (to make use of a very whimsical, but vulgar expression), whenever he arrogates to himself that power. The object of all human society is to ensure, by the combination of strength, the public and private safety ; and its first effect ought to be to restrain, and annihilate,

judge (d). It is evident, from the nature even of the thing, that the plaintiff, without overthrowing order, without becoming an oppressor, cannot be the judge, that is, decide himself on the truth of the fact in allegation, and determine the point of law relative to this fact. What would it be, if he should dictate it himself?

This is not the place to prove in detail that obligatory law is only, and can only be the faithful expression of natural right, clothed with the sanction of the public consent (e); that justice ought to be done on the spot, in the manner the most commodious for the citizen, and, to make use of the maxim of the wise, the beneficent, the great Alfred, *at the door of each man's house*; that the judges ought to be irremovable as long as they are not guilty of collusion, if we are desirous of securing their incorruptibility (f), that their independence in the administration of justice is as necessary as their integrity to guarantee the liberty, the honour, and the lives of the citizens; that these magistrates, ought to be the organs of the laws, and not their

as much as possible, the right nature has given to every individual to take the life of another who makes an attempt on his, if he cannot otherwise preserve it, by sparing him that cruel necessity.

—At every step I take I perceive roads of enquiry opening before me; but I am obliged to abandon them, and confine myself to my present path.

(d) *Astor, reus, et judex.*

(e) *Communis sponsio civitatis.* (Pand. l. I. t. iii.)

(f) "Otherwise," said the states of Tours to Charles VIII. "they would be more ingenious in promoting exactions, because they would be in daily fear of losing their offices." The Chancellor l'Hôpital said to the parliament of Paris in 1567, "A timid judge scarcely ever will do well. His disposition may be good, but the fear of offending the king and the great will spoil all. He will decide for the strongest, and will advise some expedient to content the others, which will not be justice."

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interpreters (g), otherwise they would be legislators ; that their functions are reduced to the decision of whether such or such an act be contrary to the written law, inflicting such or such punishment ; that this law therefore ought to be precise and stable, so that they may be strictly the judges only of a simple question of fact, literal and notorious ; otherwise no man can exactly know his duties and his rights, and the citizens will be in a state of real servitude to the magistracy ; all these details, and the infinitely important consequences that may be deduced from their discussion (h), have only an indirect connection with my subject. I conclude only from the exposition I have given of the principles of natural law, and of the conditions necessary to every human association, that no legitimate judgment can be passed upon a citizen, unless by the ordinary judges, legally appointed to be the organs and the depositaries of the laws.

The exercise of justice therefore is absolutely incompatible with arbitrary orders, and illegal imprisonments. If this principle be denied, it must be advanced and proved that all laws, all forms of judgment, all orders of magistracy, all privileges, are an useless heap of rubbish, and mere words void of sense and reality ; that every thing may and ought to be regulated by the will of a despot, that being the most just, most simple, and most expeditious method. No man doubts that an arbitrary power, which should be equitable and beneficent in its commands, which could order and execute every thing itself, would be the most convenient, and the most salutary government : but God alone

(g) *Verè dici potest magistratum legem esse loquentem ; legem autem mutum magistratum.* (Cic. de leg. l. III. c. 1.)

(h) See some of these points admirably well handled in the excellent treatise, *De' delitti*, of the respectable Beccaria.

is capable of exercising such a power, and God has not willed it ; for he has imposed laws on himself which he obeys. The question therefore is not to know whether it would be well to live under a despotism always *equitable and beneficent* ; but to ascertain that despotism can be, and continue always so ; that its substitutes will always be so ; that these new Arguses will have eyes enough to see every thing ; and that no Mercury will be able to lull asleep those eyes ; that there will spring up a race of men insensible to suffering, infallible, and perfect, created expressly to serve a perfect despot, and that angelic generations will succeed to these angelic beings.

If you are not certain of all this, tell me what can be the liberty of him who is not sure that the liberty of his person will be respected ; that he cannot lose it but by the commission of some offence, or under circumstances precisely determined by laws within the reach of every man's knowledge, and entrusted in pure and responsible hands ? Imprisonment is in one sense the most rigorous of punishments, since it necessarily precedes the judicial declaration of the offence. How important then is it that the laws alone should decide when, and for how long a period a citizen ought to be shut up, since the innocent as well as the guilty is equally liable to this severe scrutiny ! What pretensions can that man have, what can he contest, who is without this first security ? What signifies to him all other property, from the instant that a man possessed of power may rob him of the enjoyment of it ? Of what use are the laws, their depositaries, and their organs, if that man may impose silence, and judge in his own cause ? If he possesses that terrible power of *judging*, who will hinder him from oppressing, from destroying by his own will every citizen who may have displeased him, whose riches

or whose possessions (i) shall become matter of envy to him or his pachas ? He may, like Sylla, publish tables, deciding on the life and death of each of the wretched beings who are subject to his government. Unless he refuses his consent, we shall exist no longer.—*Hoc erit jus regis qui vobis imperaturus est, &c. &c.*

Such are the consequences of that prerogative whose legitimacy is so readily acknowledged. You see to what this point alone has led us. We have now no other hope remaining, but to live under a Pisistratus, rather than a Phalaris (k). Alas, what do I say ! what matters it whether the sovereign be naturally just, mild, and moderate, if an edged weapon be left in the hands of his ministers, and it is their pleasure to abuse it ? It is not one single despot that men have to fear, under an arbitrary

(i) We know that, during the proscriptions of Sylla, the assassins themselves used to say, that such a one owed his condemnation to his handsome house ; another to his gardens ; a third to his hot baths, &c. Plutarch cites a certain Q. Aurelius, a peaceable man, who never interfered in public affairs. He cast his eyes on the list of the proscribed, and perceived his own name there : *Ah wretched me*, cried he, *it is my estate of Alba that proscribes me !* A few steps from thence he was massacred. Under the triumvirate, Verres was proscribed for refusing Antony his Corinthian vases ; Norius, for an opal of the size of a filbert, that he was willing to preserve at the risque of his life. A young boy, named Attilius, extremely rich, was clothed in the *toga virilis* before the usual age, in order to proscribe him. A head was brought to Antony—*I don't know that man*, said he, *that is apparently my wife's doing* ; and that was true, &c. &c. Such were the sports of those who set themselves above the laws. I ask, what proscriptions did, that may not equally be effected by *Lettres de Cachet* ? This dreadful question will be discussed hereafter.

(k) *Incertum est Phalarimne an Pisistratum sit imitaturus*, said Cicero to Atticus, after the battle of Pharsalia. Every body knows of Phalaris, tyrant of Agrigentum, and his brazen bull, into which Perillus, the inventor of that infernal machine, was thrown the first.

govern-

government. When the prince dispenses with obedience to the laws, his substitutes will dispense with it also. It is not in this case a license they assume, it is a necessity they submit to; for not being able to discover in every circumstance the will of their master, they are obliged to substitute their own, since they have no fixed rule to guide them: thus one despot necessarily creates an infinity of others. The sovereign does not see every thing. In a great state he can even see very little. They who see for him are obliged to will for him, in all matters where he has set himself above the laws. Thus it happens that the despot sooner or later is overthrown by the satellites who have been subservient to his usurpations, and hence this great and unquestionable principle, verified by the whole mass of ancient and modern history. *Ministers, in changing or enfeebling the laws of a state, for the purposes of their private interests, ruin the power and endanger the person of their master, whose authority cannot be long maintained by force.*

“ Nothing more is necessary, said a Roman, descended from the throne, and who would never quit his garden to reascend it (l), nothing more is necessary than for four or five courtiers to be in strict union with each other (m), and thoroughly determined to deceive the prince, to succeed in it. They never shew things but in such a manner as to obtain his approbation.

(l) Who is ignorant of that natural reply, that makes ambition itself blush? *Ah! if you could but see at Salone those fruits and vegetables that I cultivate with my own hands, you would never talk to me of the empire. Utinam Salonæ possetis videre olera nostris manibus instituta! profectò nunquam istud tentandum judicaretis.* (Vici. epist.)

(m) Ministers will always join in boasting the utility, and even the necessity of Lettres de Cachet. They are so convenient for them !!!

“ They

“ They conceal from him every thing that can
 “ contribute to enlighten him, and as they alone
 “ beset him, he can learn nothing but through
 “ their medium, and is ignorant of every thing
 “ they do not choose to tell him. He puts in
 “ place those whom he ought to remove from it ;
 “ he turns out those whom he ought to retain. It
 “ happens, in short, by the conspiracy of a few
 “ bad men, that the best prince is sold, in spite
 “ of his vigilance, nay, even of his distrust and
 “ his suspicions (n).”

I have here transcribed the formal confession of a despot. Do you think that much confidence can be placed in such a form of government ? And had you even a king, whose moderation, discernment, activity, and information were calculated to inspire you with the most complete security, is it not enough to make you tremble, when you reflect, that if he should be disposed to adopt a different conduct, you have no means whatever to prevent him ? that he is continually liable to be imposed on, and that there is no remedy against his error ? in short, that he is not immortal, and that he will leave to his successors the hereditary power of being tyrants ?

Were it necessary to choose in this frightful alternative, between the surrender of the lives and fortunes of the citizens, or that of their liberty, into the hands of an arbitrary monarch, there would

(n) *Ego*, it is Vopiscus who speaks, *à Patre meo audiui, Diocletianum principem jam privatum dixisse nihil esse difficilius quam bene imperare. Colligunt se quatuor vel quinque, atque unum consilium ad decipiendum imperatorem capiunt : dicunt quid probandum sit. Imperator qui domi clausus est, vera non novit : cogitur hoc tantum scire quod illi loquuntur. Facit iudices quos fieri non oportet : amovet à Republica quos debebat conservare. Quid multa ? ut Diocletianus ipse dicebat, bonus, cautus, optimus venditur Imperator. (Vopif. Aurel. 43.)*

be

be no occasion to hesitate. I am aware that in our constitutions, founded on the feudal system, all sorts of property are connected by the strongest chain, and that it is impossible to attack one, without wounding the others : I am aware that every where, where the doctrine of imposts is not fixed, simple, and immutable, there will never exist either true liberty, or strength, or stability, or quiet, or durable prosperity ! But on elives, in short, though loaded with excessive impositions, though trampled on by a tyrannical collection : and who but a be-fotted slave can live without liberty, that soul of life ? What signifies political to him who no longer possesses civil liberty ? Is it not this latter which every constitution should above every thing ensure ? (o). What rampart besides so powerful, to preserve the one, when the other is destroyed ? The power of imposing their own taxes is only precious to a people, in as much as it is founded on a legislation which may serve as a check to authority : for if it were their only privilege, it is easy to perceive, that the sovereign, being at liberty to supply the deficiency of voluntary subsidies by arbitrary extortions, or monopolies, the most oppressive of taxes (p), and to punish the re-fusal

(o) O ! Geneva ! Geneva ! what misfortunes, and what tears has the neglect of this maxim laid in store for thee !

(p) This is what happened in England as long as the right, enjoyed by the people, of imposing their own taxes, was supported by no other privilege. Our kings employed, if possible, still more ruinous expedients. We know, for example, that immediately after the States General of 1338-9 had resolved and concluded, in the presence of Philip de Valois, *that no taxes could be imposed or levied on the people in France, unless required by urgent and evident necessity, and then only by the grant of the states*, the king indemnified himself by the coin, the greatest part of which was at his disposal. The mark of silver rose from 57 fols, 6 deniers, its value on the 12th of June, 1333, to 13 livres, 10 fols, on

fufal by imprifonment, his fubjects would only be the more unhappy. In Turkey the fovereign impofes no tributes ; he does not directly pillage the people ; *This is a relief neceffary to defpotifm*, fays Mr. Rouffeau, *and without which this horrid government could not fubfift* ; but in lieu of thefe tributes, the pachas harafs the people at their pleafure, and doubly harafs them, fince they work for their maffers, and for them. There are nations ftill more trampled on : thofe, for example, wherein the arbitrary impofition of taxes is eftablifhed, though the fovereign does not, on that account, renounce all the other ruinous expedients which procure him a momentary fupply of money, of which he always is in want, thanks to his diffipations or mifgovernment : thofe, for example, where the very nature of the collection compels the moft atrocious exactions, and throws fociety into a real ftate of war, where the people are oppreffed by public farmers, ftill more deftructive than the pachas, and more greedy ; where thefe infatiable publicans, taking cognizance, to the exclusion of the courts of juftice, of all the crimes they have invented, and

on the 9th of April, 1342-3. Never did Philip le Bel, the firft who altered the coin, dare to go fo far. That fame year, 1342, is the epoch, we know likewife, of the institution of the Gabelles, which were not to be of long duration, nor applied to the domain, *on account of the difpleafure they gave the people* ; yet we fee them in our days ; and they will poffibly continue to hold this wretched *people* in irons as long as the monarchy fhall laft. This fame Philip de Valois, in 1344, without any judicial formality, cut off the heads of fourteen nobles of Britany and Normandy, who had come to Paris, on his invitation and the public faith, in the middle of a truce : an atrocious outrage, and unheard-of until then in the hiftory of the nation, which rekindled the war, and was one of the principal caufes of the evils of that difaftrous reign. Now I ask, of what ufe it was to Oliver Clifton, and the other gentlemen affaffinated with him, for the nation to have poffeffed the right of taxing itfelf ? Would this privilege have faved their liberty and their lives ?

punish-

punishing them according to laws dictated by themselves, are at once the legislators, or, what amounts to the same thing, the despots of the despot, judges and parties, and by the mouth of their mercenaries, decide on the liberty and the life of the citizen, who has violated no other laws than theirs. They might revenge themselves with less trouble, were their vengeance less multiplied; for *lettres de cachet* are as much at their disposal as their venal judges; but it would then be necessary to beset the whole kingdom with state prisons; their support would absorb the public revenues, and the *chambers ardentes* do the business at less expence. It is evident that the sovereign, who has the power of erecting such companies, and such tribunals, to create crimes, and to inflict on these crimes of his creation the most frightful and most cruel punishments, as if the most atrocious attack on natural law were in agitation (q), of taking away, by the most tyrannical, I would say, the most extravagant methods, if the subject were less odious, the proportion between crimes and punishments, of giving birth under the very feet of commerce to all

(q) The crimes excepted from the pardon granted by our kings at their coronation, and which their council have judged unsusceptible of remission, are, duels, robberies on the highway, the crimes *læfæ majestatis*, divine and human, poisoning, coining, rape, violation, premeditated burnings, wilful murders, *deserters*, in short, *prisoners for fines at the suit of the king*, *unlicensed sellers of salt*, and smugglers. Thus are sellers of salt without license, and smugglers, prisoners for fines, and deserters, assimilated with murderers, incendiaries, and criminals guilty of human life majesty. (As for criminals of divine life majesty, I do not know what it means; nor can I hear, without indignation, of men pretending to *avenge* God, and to ascribe to him our ideas and our passions). Men are hanged and broken on the wheel for crimes created by the exchequer.—The Neros and the Domitians would doubtless have been ashamed of promulgating such a law, which subsists however under our *mild monarchies*.

forts

sorts of formalities, of constraints, and restrictions; it is evident, I say, that a sovereign so absolute may dispense with the power of imposing taxes, without diminishing his destructive authority, and without being exposed to obstinate refusals. Attempts on civil liberty therefore will overthrow political liberty. *Not to possess the property of one's effects*, says a celebrated magistrate, *is to be a slave: not to possess the liberty of one's person is the greatest slavery with which human laws are acquainted. Humanity degraded to this point supposes the completest despotism* (r).

Ferocious robbery, on the other hand, is limited by the very nature of its excesses; but civil plunder is without bounds. It reduces oppression to a system; it perverts opinions, manners, and natural understanding. Alternately supported by seduction and by force, it spreads rapidly its wicked and contagious doctrine, and covers successively every part of the administration with a mysterious and sacred veil. Sanguinary violence excites to the most extreme degree the public indignation: it ferments, and sooner or later the oppressed people do themselves justice. Solemn and formal outrages, that awaken the spirit from which despotism has every thing to fear, are infinitely less formidable therefore than illegal imprisonments, which, escaping the public opinion, by subterfuge, by concealing from them the danger, secretly, and consequently more surely, undermine liberty, and are the most durable instruments of tyranny.

Let it not be imagined that I have hazarded this terrible expression. I have appreciated well its force before I made use of it. TYRANNY is neither more nor less than the attack of the stronger

(r) Mr. de la Chalotais, *Compte rendu des constitutions des Jésuites*.

on the weaker. Tyranny therefore is more particularly the injustice exercised by those who are invested with the public power, on individuals, composing the social body ; and I maintain, after mature reflection, that there is no tyranny more cruel and more odious than arbitrary and indefinite imprisonments. To prove this assertion, the truth of which I maintain in its strictest sense, I shall, without declaration, and in the tone of a simple recital, compare this method of proscription, to which our eyes and our ears are so well accustomed, with that other institution, that chef-d'œuvre of fanaticism, of superstition, and of despotism, united and leagued together to oppress mankind. The reader perceives that I mean to speak of the tribunal of the inquisition.

Laying aside every discussion of toleration, let us examine the most horrible injustices of the inquisition. The accuser and the accused are never there confronted ; no man is informed of the depositions made against him. The son may depose against the father ; the father against the son ; the wife against the husband ; brother against brother ; no person whatever is permitted to advise the unhappy man whom the inquisitors have laid hold of, or even to solicit for him : the prisoner, in short, is put to the torture, and if condemned, his effects are confiscated.

A *lettre de cachet* plunges a citizen into a state prison : he is not confronted with his accuser, and that accuser is in general his judge and party (s), his relation and his informer ; for arbitrary imprisonments are more frequently employed in private affairs, than in what relates to government : there are a hundred, there are a thousand family

(s) This is always true when a *lettre de cachet* is obtained by an individual, and highly probable when the minister punishes.

victims, for ten state prisoners, and the cells of the civil inquisition are peopled by domestic vengeance. Their inhabitants know not what is alleged against them. If they are informed of it, it is because they are judged by commissioners, the last outrage of despotism on justice ; it assumes that garb the better to disguise its vengeance. In every other case, the prisoner is ignorant of what he is accused, whilst in the cells of the inquisition he is furnished at least with the depositions on which is founded the judgment to be pronounced against him. All correspondence is prohibited in both the inquisitions, and the most profound secrecy is preserved respecting the fate of their unhappy prisoner, so that the persons interested, or disposed to defend them, those relations who do not partake of the animosity or the frenzy of a powerful head of a family, the perfidy of a corrupted spouse, the intrigues of a malicious and covetous brother-in-law, are ignorant of, and finish, as well as the ministers perhaps, by forgetting, even the very existence of the prisoners. The punishment arising from solitude, and the profound uncertainty of the future, and even of the present, from the total privation of every species of society, nay, often of every amusement, since the means of reading or of writing are usually cut off, and always very limited ; this punishment, I say, is it less cruel, because more lingering than the torture ? Mr. de Beccaria has very well observed, *that it is not the intensity of pain which produces the greatest effect on the human mind, it is its duration, because our sensibility is more durably and deeply affected by feeble, but repeated, impressions, than by a violent, but transient, emotion* (t) ; now it is from the mind, that

(t) *De' delitti, sect. XXVII. della pena di morte.*

we are really, and for any long time, and continually unhappy. Bodily sufferings are limited by our physical sensibility and by our organization, and this is one of the greatest bounties of nature. In vain has man displayed as much barbarity in the horrible variety of torments he has invented, as in the infinite number of his crimes. At the side of punishment is death; the most ingenious of tyrants cannot rob us of that; it is by prolonging our lives in a dreadful situation that he gluts his ferocity (u); since moral has remoter limits than physical sensibility. As to the confiscation of property, I doubt whether that can much affect the man from whom has been ravished the property of his person. But if this difference be insisted on in favour of the civil inquisition, I shall observe, that a confession, false or true, throws open the cells of the religious inquisition, and that it is of no avail in state prisons, where every thing seems to repeat to the unfortunate inhabitants, the words that Dante read on the gates of hell:

(u) A person accused, when pursued by Tiberius, slew himself: *He has escaped me*, said the tyrant. (Suet. Tib. 71.) Asinius Gallus dies with hunger; Tiberius deigns to allow him sepulture; but laments the circumstance which, says he, withdraws the culprit from justice, and hinders me from seeing him convicted. (Tacit. Ann. l. VI. 23.) You will observe that Asinius was accused and tormented for three years. On another occasion, a prisoner begged from Tiberius a speedy death as the only favour; the tyrant answered: *I am not yet reconciled to thee*. (Suet. Tib. 61.) Thus the sentence of death constitutes the clemency of despots. Caligula said to his executioners: *Strike, so as that he may feel himself die*; and one of Nero's satellites, who had employed two strokes to take off the head of his victim, boasted to his master, *that he had killed Subrius once and a half*. (*Sesquiplaga interfectum à se*.) Tacit.

LASCIATE OGNI SPERANZA, VOI CHE'NTRATE (x).

Every reasonable citizen must shudder when he reflects upon this faithful exposition. Great and small, rich and poor, all are threatened ; for where is the man so happy, or rather so unfortunate, as to have nothing remaining for a prey to avarice and tyranny ? (y) The proud Diogenes himself might be deprived of the light of his sun. Where is the inhabitant of a country, where *lettres de cachet* are in use, who has not a naked sword suspended over his head ? a terrible sword, which hangs by a thread that may be broken by the slightest breath of passion, whim, or caprice ! . . .

Thirty tyrants, oppressed, tore to pieces, and overflowed Athens with blood. Theramenes, admitted to a share of their power, and not the accomplice of their fury, dared to oppose their tyranny. Critias, his implacable enemy, and one of the chiefs of the aristocracy, accuses him before the senate of disturbing the state, and conspiring against the government. The senate, servile as it was, was not so servile as to condemn Theramenes ; it had not the courage to acquit him ; but it shuddered at the thought of shedding the blood of this courageous citizen. Critias, perceiving that they hesitated to gratify his hatred, raises his voice and says, “ It is the duty of a sovereign magistrate “ to prevent justice from being evaded ; I fulfil “ that duty ; the law forbids the infliction of capital punishment on one of the *three thousand*,

(x) *Canta terzo.*

(y) *Homo supra mensuram humanæ superbiæ tumens, vidit aliquem cui nec dare quidquam posset nec eripere.* (Senec. l. V. de benef.) ‘This is a bon-mot, and that is all.

“ unless

“ (z) unless by the consent of the senate. Well
 “ then ! I strike off Theramenes from that number,
 “ and condemn him to die, by virtue of my au-
 “ thority, and that of my colleagues.” Thera-
 menes throws himself on the altar, and cries out,
 “ Athenians ! I demand that my trial may proceed
 “ conformably to law, and that cannot be refused
 “ me without injustice : it is not that I do not see
 “ that the justice of my cause will avail me noth-
 “ ing, any more than the sanctity of the altars ;
 “ but I wish to shew at least that my enemies res-
 “ pect neither gods nor men. I am astonished that
 “ wise men like you should not perceive that it is
 “ not more difficult to erase their names from the
 “ roll of citizens than that of Theramenes.”——
 Critias violates the asylum where his victim had
 taken refuge : his followers drag him from the al-
 tar : the senators fly in consternation, and are dis-
 persed : Socrates, who reared his lofty head in
 the midst of thirty tyrants (a), Socrates alone was
 prodigal of ineffectual efforts to save the oppressed
 innocent..——Beneficent philosophy ! thou who
 bestowest courage and virtue, be thou ever rever-
 ed for having produced a Socrates, who brought
 thee down from heaven to place thee upon earth !
 (b)—

O !

(z) The executors of the council of Thirty, become the col-
 lege of tyrants.

(a) *Et imitari volentibus magnum circumferebat exemplum, cum
 inter triginta dominos liber incederet.* (Senec. de tranquill. anim.
 3.)

(b) *Socrates primus philosophorum devocavit à cælo et in urbibus
 collocavit, et in domos etiam introduxit et coegit de vita et moribus,
 rebusque bonis et malis quærere.* (Cic. Tusc. quæst. l. V.) Join
 to this trait of intrepidity of Socrates, which I borrow from Xe-
 nophon, (*Memorabilia*, l. i.) another, not less admirable, which
 I had not remarked in Plato, but which I find recorded in a note
 of

O! my blind countrymen? IT IS NOT MORE DIFFICULT TO ERASE YOUR NAMES FROM THE ROLL OF CITIZENS THAN MINE: Comprehend well this fearful truth. But what need is there for a sensible mind to make this personal application, to be chilled with horror in reflecting on arbitrary orders? Does not such a violence interest him sufficiently, if not committed on himself or on his friends, on the person at least of so many of his fellow citizens, shut up in the darkest dungeons, without succour, either from the law, or from their family, and who have no other crime perhaps than that of being feared, hated, or importunate? To suffer in a profound solitude every possible privation and anxiety, to be torn from all one loves, from all by whom one is beloved; is not this worse, infinitely worse, than death? To take the life of an individual, illegally condemned, is an act of tyranny so odious as to spread the alarm throughout a whole nation; but it does little harm to the object so cruelly sacrificed, for an instant frees him from all regrets, all desires, and all pains; it is therefore the idea only of an atrocious violence that revolts mankind in such a catastrophe. From a strange prejudice, illegal and indefinite imprisonments appear less barbarous: is it not then a much severer punishment? The torments of a state prison, where nothing is left to the wretched but the breath of life, are a punishment not to be compared with any other. Friendship and love, those benefactors of the world, become the executioners of the unhappy sufferer; the more active his heart, the more elevated his

of the learned philosophical editor of the Seneca of Mr. la Grange, (Tome V. p. 243.) But I think the Roman philosopher may have had in view the punishment of Theramenes, in speaking of the resistance of Socrates, as well as that of Leon the Salaminian.

mind,

mind, the more energy of senses he possesses, the more acute and multiplied are his torments : those precious gifts of nature turn to his ruin : he lives only for grief : no correspondence, no society, no certainty of his destiny. What a mutilation of existence ! It is to cease to live, without enjoying the repose procured for us by death (c).——Well then ! we have every day before our eyes some fresh example of these mute severities, and we look on them without horror, because there is not a stream of blood. It seems that he who suffers whole years of cruel anguish merits less pity than the momentary sufferer by the edge of the sword.——Ill betide, ill betide that nation, where they who are not themselves attacked, hate not as much, pursue not as eagerly the oppressor, as the oppressed himself ! “ Ill betide those arid souls which
 “ can only be moved by cries and tears ! The
 “ long and silent groans of a heart wrung with
 “ distress have never extorted from them a sigh ;
 “ never has the sight of a dejected countenance,
 “ of a wan and squalid visage, of a haggard and
 “ exhausted eye, which can no longer weep, produced a tear from them : the evils of the soul
 “ are nought to them : they are condemned :
 “ theirs has no feeling ! expect from them nothing but inflexible severity, hard-heartedness,
 “ and cruelty : they may be just and upright ;
 “ but never clement, generous, or compassionate :
 “ I say that they may be just, if it be possible for
 “ a man to be so who is not compassionate (d).

But let us lay aside every sentiment of compassion, let us listen only to the voice of the most severe, and most inflexible justice ; and let us see whether it can require, in certain cases, and for

(c) *Jam vita exempta, nondum tamen morte adquiescebat.* (Tacit.)

(d) Emilius.

the public interest, that a citizen should be arbitrarily deprived of his liberty.

C H A P. VI.

Arbitrary and indefinite imprisonments, far from being necessary and legitimate in state affairs, are then only the more unjust, and the more fatal. Licentiousness, so far from being the extreme of liberty, and the natural effect of it, is directly contrary to liberty.

VERY few ministers, said Dr. Swift, will stoop to take advice. This extravagance arises from a maxim in which they do not themselves believe, whatever they may pretend; that there is something so sublime in politics, that one must be a genius of the first order to become an adept.

I imagine however that our Visirs know themselves too well to be really persuaded that the places filled by them require great talents (e), but the

(e) Cardinal Mazarin laughed with his confidants at those who ascribed to his address those favourable events which arose from time and chance. It has often happened to me, said he, after torturing my mind in every way to find an expedient, ineffectually, that I have abandoned all to the caprice of fortune, which disposed all things admirably, and brought them to a happy conclusion. (See *Mem de Joly*.) Madame de Maintenon said still more pleasantly, in coming from a council: *I have been asked the secret; but such unimportant matters have been discussed, they who have discussed*
“ them

the people of every country have been unable to shake off this prejudice. It is a very extraordinary circumstance I allow ; for so many notorious idiots have held the helm of government, that it is easy to perceive that such a political system as will enable such men to govern for a series of years, is no such marvellous invention. It is simply the result of despotism, ruling on arbitrary principles, that is to say, by passion and caprice, at the risk of every consequence. No matter ; this great word *policy* always imposes on the imagination of mankind ; they think every thing is wonder, enigma, and mystery in that science (f), wherein they still

“ *them appeared to me so ridiculous and deceitful, that the secret is much more useful to ministers than to the public affairs.*” —
(Mem. de Maintenon.)

(f) You may remark that the pretended adepts in this science, finish always by being the dupes of their own quackery, so fluctuating are their principles and their language. For example, from the time of Charles the Fifth, and above all, since William the Third, who alone was not deceived by his principles, which were solely directed to his private interest, we may bestow on all politicians the name given in derision to Horace Walpole of *the Grand Balance Master*. The balance of Europe is become the basis of all their speculations, and the fertile pretext for the most adventurous enterprizes, and the most perfidious manœuvres. The sole art and science of many ministers has been contained in these words : *the balance, the equilibrium of Europe, the equilibrium of Commerce, &c.* This is the talisman with which the ambitious have fascinated the eyes of nations, and raised a tumult throughout Europe. The most able statesmen have been seduced by it ; see with what gravity Bolingbroke analyses and discusses this important matter in his apologetic writings, and in his *political view of Europe* in other respects an admirable work. This powerful genius, one of the greatest perhaps who ever filled the ministry, was unable to shake off the universal prejudice in that respect, though he clearly descried the ruin of England in the system of William the Third. In a word, never was a chimæra, (for it really was one, and I defy politicians to prove the contrary by facts) never was a chimæra so eagerly adopted, pampered by so much treasure, and bathed with so much blood.

The

still further believe, it is constantly necessary to rise above the ordinary rules of good sense, justice, and even humanity, and all for the greater advantage of the *people*, at least, if we may credit the eloquent manifestos, and preambles to the edicts of their *pastors*.

This hitherto boundless credulity, has produced a series of reasoning so often repeated, and for that reason so established, that no man thinks even of

'The balance of Europe is even now made use of as a lure by men of abilities, for the advancement of their projects of personal interest, and the formulary phrase with which consequential fools cover their stupidity. Europe has depopulated and ruined herself, in the pursuit of this fantastic object; she has destroyed, and continues to destroy herself, to ensure her tranquility, and has nearly lost her civil to secure her political liberty. I wish to know what worse consequence would have arisen from the establishment of an universal monarchy, supposing, contrary to all reason, that it ever had been possible. In a word, if the struggles for the balance of power have been productive of some good in Europe, which is much more than doubtful, I shall still apply to those ministers who fatigue themselves so much in preserving the political balance, what an able and eloquent English patriot, (Mr. Pulteney said of the complicated and ruinous negotiations of George the First, and of his son, of which England is at this day gathering the bitter fruits. "They are like those pilots, who " having a sure, disencumbered and direct course to gain the " harbour, think proper to conduct their vessel by an indirect " route, through sand-banks, rocks, and shallows. They lose " a great number of sailors; they destroy a great deal of rigging, " and cordage. They put their owners to an immense expence, " and when by chance they have at length got into port, they " triumph in their good conduct. . . ." O ye political quacks, and you, ye credulous nations, read *Gulliver*! See with what depth he exposes all the tricks and the knowledge of the cabinet, and remember the answer of the king, alas! but too imaginary, to whom this traveller is speaking: *and he gave it for his opinion, that whoever could make two ears of corn, or two blades of grass, to grow upon a spot of ground where only one grew before, would deserve better of mankind, and do more essential service to his country, than the whole race of politicians put together.* (*Travels by Lemuel Gulliver. Journey to Brobdingnag, Chap. VII.*) . . . Remember this answer, I say, and blush if you can.

calling

calling it in question. "There is no good in life, say they, without some alloy of evil. It is possible that lettres de cachet and arbitrary imprisonments may be attended with some inconveniences ; but particular instances vanish before the eyes of the public administrator. Possibly some innocent persons suffer ; but society is peaceable ; conspiracies are impossible : seditions, and revolts are soon suppressed, and the general tranquillity is maintained."

This grave argument might be answered with a little less phlegm : If there be not, one might say, any good in this life without some mixture of evil, and that some licentiousness be the evil attached to liberty, we must not thence conclude that man should be deprived of the first of his rights and possessions. Despotic states are tranquil ; I believe it ; so are dead bodies ; nobody will argue where there is no subject of dispute. . . . But it is necessary to overturn this frivolous objection, which is totally without foundation, instead of shewing that it does not prove what it pretends to prove. It is above all necessary to quit those vague general propositions by which mankind have been so dazzled, and which have been so useful to their oppressors.

I say that the prerogative of arbitrary, and indefinite imprisonment is not admissible in what are called *affairs of state*, and the reason I allege is simple. The laws know how to punish treason and disobedience, as well as other crimes. They are even as they ought to be, the most severely proscribed, as being in their consequences the most fatal to society. Now the monarch who can give orders to arrest and convey a man to the Bastille, can equally deliver him over to the ordinary course of justice. The formula therefore consecrated to the

the vindication of all illegal orders, which says, "that from certain considerations, or state reasons, of which the magistrates cannot judge, the King may WITHOUT INFRINGING ON THE LAWS, make use of the power residing in his person by other MEANS OF ADMINISTRATION, from which no person in the kingdom must think himself exempt (g)." It is therefore without reason, or rather contrary to all reason, that the body of the magistracy are agreed *that the secret of the administration, and the execution of the orders of the King must not be submitted to the inspection of the ordinary tribunals; and that this maxim is respectable when the administration is really in question* (h). For a rigid logician, it is no great stride to reckon with the learned Naudé, the massacre of Saint Bartholomew amongst *those strokes of state, those bold and extraordinary measures, that princes are compelled to take in difficult and imminent affairs against the common right, without regard to order, or the forms of justice, risking the private interest for the public good*. For if the king be the sole judge in matters

(g) Answer of the King on the 26th June 1759, on the subject of the remonstrances of the parliament of Rouen of the same year, or rather the circular answer to all the parliaments of the kingdom respecting arbitrary orders. The king adds, *that he reserves them* (these acts of administration) *for occasions wherein they may be necessary for the public good, and the interest of families*. I am examining in this chapter whether the public good really requires it. I shall afterwards examine whether the interest of private families requires it, as is so generally believed.

(h) These words are extracted from the remonstrances of the *cour-des-aides*, (*the arbitrary court of the farmers general*. Translator,) of the 14th August 1770; but it is the invariable maxim of all the judicial courts in the kingdom, who have scarcely ever exposed with energy the danger of these strokes of authority, where they did not affect the magistracy. These are doubtless very fatal, but those which tear the citizen from his natural judges, or deprive him of the protection of the laws, evidently produce by different means, the same effect.

of

of administration, if he can then pronounce the sentence, and dispense with forms, I do not see what we have the right to censure in that abominable butchery.

Before we refute these principles, let us observe, that such have been the pretexts made use of by tyranny in all times to justify her gloomy march. "Policy does not permit the mysteries of the palace, the secret councils, the orders executed by the soldiery, to be divulged. To refer every thing to the senate, is to unnerve the imperial power; a prince ceases to be a prince, when he suffers accounts to be rendered to any but himself (i). This is precisely what Sallust said to Tiberius: and why did he say it? to induce him to hide from the *inspection of the tribunals* the murder of the grandson of Augustus. After so great a number of experiments, we ought at length to be convinced, that the swelling words of STATE SECRET, SECRET OF ADMINISTRATION, applied to the internal and domestic government of nations, are calculated to cover all sorts of violence, and the most atrocious attempts even against the person of kings. To give only one example of this, I shall select the most deplorable that is furnished us by history. If orders to tear citizens from society were not so lightly obtained in France, if their detention were always submitted to the *inspection of the tribunals*, La Coman would not have been apprehended, made prisoner, and hid from every eye, even at the very moment she was exerting every method to get access to Henry IV. to give him notice of the horrible plot of which Ravallac was the instrument;

(i) *Monuit liviam ne arcana domus, ne consilia amicorum, ministeria militum vulgarentur neve Tiberius vim principatus resolveret, cuncta ad senatum vocando. Eam conditionem esse imperandi, ut non aliter ratio constet, quam si uni reddatur.* (Tacit. ann. 1. 6.)
she

she would have been heard at least by upright and faithful magistrates, and this great king probably whose death put France in chains, would not have been assassinated (k)

It will be in vain to accumulate political sophisms. The sole authority which it is impossible to wrest from the monarch, is that of the acting law. Judg-

(k) See the declaration of Mademoiselle la Coman, reported in the *Journal de l'Etoile*, vol. IV. edit. de 1741. The whole of this horrid mystery of iniquity is slightly cleared up, thanks to the detestable prevarications of which the judges on the trial of Ravaillac and la Coman were guilty. The Duke d'Epemon, and the Marchioness de Verneuil were indicted, and interrogatories ordered, although in a charge of lese Majesty. All sorts of presumptive proof, and of witnesses were neglected. (See Rigaut, Merc. Franc. l'Etoile, Manuscrits de Dupin, &c. &c.) La Coman affirmed that she had several conferences with Ravaillac. She was in prison during the trial of this wretch, and was not confronted with him. It was pretended that this unhappy woman did not prove judicially the facts she deposed to, and they had taken from her the means of doing it. But men of sense will never be convinced, that if La Coman had calumniated in so weighty an affair, the Duke d'Epemon, the Marchioness de Verneuil, and more illustrious personages, perhaps she would only have been condemned to a perpetual prison. See, on this melancholy subject the *factum* of Captain La Garde, and the arret relative to him at the end of the fourth volume of the *Journal of Henry IV.* See also the advertisement of the sixth volume of the *Memoirs of Condé.* This unfortunate officer had made some important discoveries respecting the plot of Ravaillac, which he communicated to Henry. That good king paid no attention to it, and sent him into the suite of the Grand Marshal of Poland. La Garde returned to France after the murder of the King, and was left for dead by hired assassins. After thus sealing his fidelity with his blood, he was arrested and sent to the Bastille, where he remained for nine months without being interrogated, and overwhelmed with ill-treatment. He lost his liberty, at length, without resource, although the parliament found in him *no criminality whatever*, and recommended him to the favour of the king, (Louis XIII.) after declaring him innocent by their arret of 12 August, 1616; but this unhappy man knew too much of the matter to be released. . . . See then how lettres de cachet serve the purposes of kings!

es never can be formidable to the supreme magistrate, who wishes only the execution of the laws. Alas ! who is ignorant, that even in the times of faction, the party chiefs would not manage as they pleased the judicial bodies which would expect the conclusions of the officers of the King, says the Cardinal de Retz, even were there an army at their gates ? “ The ministers of the law can do nothing, “ said the parliament of Rouen to Louis XV. if “ they have not the law for security, and the plurality for witness. The law is their guide : they “ are the organ of the law : they pronounce in “ your name what the law has said, and consequently what you yourself have said, since the “ law is your work. The power they exercise “ flows immediately from you, and returns to “ you ; on the contrary, a part of your authority “ passes necessarily out of your hands as often as it “ is delegated under the title of administration, “ and above all in those places where you are not “ present, and in all things, you cannot see with “ your own eyes. He who exercises it has no plurality as a security for his wisdom, for he exercises it alone. He has not the law to guaranty “ his conduct, for administration extends to things “ the law has not ordained : It is not your will it “ executes : the details springing out of circumstances cannot have been communicated to you : “ it is authorised to supply its own will for yours, “ and to execute it with empire : even here what “ facility of abusing it to the gratification of its “ ambition, its interest, its passions ! The same “ power it has of doing evil, serves with efficacy “ to prevent you from knowing it. Should it still “ farther obtain the power of silencing the law that “ watches over it, what will there remain then of “ your authority ? invested with your power, and “ deco-

“ decorated with two irreconcilable qualities, “ what will not such a man undertake (1) ?” The whole body of history teaches us what to think of it.

But the people ! the people ! (for after all, nine-nine out of the hundred of human beings ought to be reckoned for something in the balance of justice, in a philosophical discussion, nay, even in a political consideration) what is to become of them ? If government itself is obliged to admit that *the maxim* which disallows the tribunals the inspection of the orders of the king, against the liberty of the citizen *is terrible in its consequences, when it is inferred from thence that there is no recourse against any of the orders granted by the ministers* (m), ought it not either to be for ever abolished, or should they not, at once declare us slaves ? Who shall determine the cases where an appeal may be made from those orders ? Who shall dare to raise his voice against them ? Who shall even have the right to do so, if the words, THE SECRET OF ADMINISTRATION impose silence on him ? when it shall the most evidently appear that an affair has no connection with the king or public order, the answer will be, that it is impossible to disclose these mysterious affairs, because they are THE SECRET OF ADMINISTRATION ; it will be said that the right of the citizens to liberty *not being distinguished from the laws, of which the King is the source and the principle, all his subjects generally and particularly rest in his hands, under shelter of the royal authority, from which he knows that the spirit of justice and of reason ought to be inseparable, and that when in that sense, he makes use in*

(1) The above cited remonstrances of the *Cour-des-aides*.

(m) The King's answer of the 8th April, 1759, to the remonstrances of the parliament of Rouen, of the 27th March of the same year.

cases of need, OF THE ABSOLUTE POWER THAT BELONGS TO HIM, IT CAN BE CALLED NOTHING LESS THAN AN IRREGULAR PROCEEDING . . . (n). Let us endeavour to discover the sense of this fine phrase. I do not here examine whether a King of France be really by the constitution of the kingdom *the source and principle of the laws*; whether the nation has lost, or can lose its right of concurrence in them; whether under this supposition *absolute power* be not PRECISELY the same with *arbitrary power*; whether any monarch whatever, whether any man, whether any other than God, can exercise such a power, and whether God himself possesses it; that is to say, whether he is not in the impossibility of being unjust, and consequently subjected to the laws of justice, coeternal with himself. But I see on the one hand that it is a principle with our kings, that none of their measures, dictated by *need* is *irregular*, when consonant *with justice and with reason*. On the other hand, I perceive that no person whatsoever, must or can cast an audacious eye towards *the proceedings of administration* dictated by *superior considerations*. At present I ask what *proceeding* will ever be *irregular*, if the vague term *need*, of which no explanation, no proof, no account is necessary, be sufficient to stamp it with legitimacy? I ask whether the prince who arrogates to himself this right, which no man dare call in question, which the magistrates themselves accede to and defend, cannot strike off as many heads as he shall think proper to proscribe, without giving any reasonable cause of complaint? They will be acts of his *absolute power*, perfectly conformable, according to him, (and that is sufficient, since he alone is to decide) *to the spirit of reason and of justice*.

(n) King's Answer, &c.

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They will be *proceedings* employed in this *spirit*, and consequently *nothing less than irregular*. . . . Impartial and reflecting reader ! is it probable that some sovereigns will never find their will in contradiction with *that reason*, and *that justice* of which they alone are to judge ? and what sort of existence short of pure and simple slavery, will there be in a country where these principles are admitted, which *no man either must or can call in question* (o) ? Is not this the most complete code of the most terrible despotism ?

Ah ! far be from us maxims so vague, and such dangerous exceptions, which are necessarily arbitrary ! The man who makes an attempt against the government commits a crime : He even, of all others, ought to be the most clearly marked out by the law, as the most dangerous to society, and consequently the most punishable. But wherever the doctrine of *state crime* shall be arbitrary or ill defined, it is evident that every thing will bear that character in the eyes of tyranny, and its satellites, when they have a victim to sacrifice, and that it will become the only crime of those whom it is impossible to reproach with any (p). Look on those detestable tyrants, the Octaviuses, the Tiberiuses of Rome (q). See the Gratiens, the Valenti-

(o) King's answer, &c.

(p) *Majestatis singulare et unicum crimen eorum qui crimine vacant.* (Plin. panegy. 42.)

(q) I do not select them by chance. Octavius and Tiberius are real tyrants. Nero, Caligula, Caracalla, &c. are furious madmen, for whose rage despotism had opened a free career. The latter should have been put in chains ; but the others, who were skilful corrupters, ought to have been overthrown, tried and punished. . . . What ! *Augustus* was a tyrant then ? . . . That *Augustus*, to whom a poet, sometimes a philosopher, has decreed divine honours, declaring that there never has appeared, nor ever will appear his equal !

Jurandas

lentinians, the Arcadiuses, those stupid despots,
slaves in their palaces, children in battle, strangers to
the armies, which only guarded the empire, because
 H 2 *they*

Jurandas que tuum per numen ponimus aras,
 Nil oriturum alias, nil ortum tale fatentes.

(Horat. l. II. ep. 1.)

Yes ! that Octavius, deified by slaves and men of letters, under the name of Augustus, was a cowardly, perfidious and cruel tyrant ; an implacable enemy, an ungrateful friend ; a monster the more odious, as his great talents, his exquisite judgment, his profound ability, were but made subservient to his crimes, and to the ruin of his country, which he enslaved for ever, which he delivered over to his adopted son Tiberius, and to the Neros, the Caligulas, the Domitians, the Caracallas, to whom he left an unlimited authority. And this is the man who is compared by flatterers without blushing to the kings who are the objects of their adulation. Alas ! what signifies it to posterity, that Horace and Virgil had the meanness to forget the crimes of Octavius, and to lavish their praises on Augustus, because they were cared for by him ? That the cowardly Ovid offered worship to his oppressor, because he dreaded still more evil from him than he had received ? of what value is the title of *Augustus*, decreed to him by courtiers, slaves and poets, in the eyes of him who reads in Lucan, *that if the horrors of civil wars were necessary to pave the way to Nero, crimes and disasters become at that price, real benefits ?* (*Scelera ipsa nefasque, hac mercede placent.* Vid. Pharf. l. v. 33 and 30. seqq.) an execrable saying, worthy of the man who informed against his mother, to save his own life, which however he did not save. (Tacit. ann. lib. XV. cap. LVI.) In Quintilian, that *Domitian was a God* : (*Instit. orat. l. IV. præfat. 3, 4 & 5, l. X. 1, 9. Non satis honorem judiciorum cælestium intelligam, &c.*) In Martial, that *Otho was far above Cato, &c. &c.* Wicked princes, and powerful villains always have been, and always will be the most flattered. The reason of which is so simple as to be trivial. . . . *But the reign of Augustus was just and fortunate for forty years. . . .* Just ! how could he be just whose very authority was a crime ? To claim that title, the usurper must have begun by abdicating. He was just that infamous debauchee, who, a tyrant even in his pleasures, in contempt of all equity, of all decency, nay, even of all prudence, dishonoured, agreeable to his caprice, every family in Rome ! (Zonar. ann. l. X.) and punished with death at the same time the lovers of his daughter ! (Tacit. ann. l. IV. 44. Dion. Hist. Rom. l. LV. c. X.) *Fortunate ?* No writer except Mr. Lin-
 guet

they had the constant disposal of it (r). See them striving to place the rampart of terror between them and their people; behold those insolent Visirs, the most despicable of mankind next their masters, multiplying the crime of lese majesty (s) to infinity, extending it to all who can disturb, incommode, or displease them, making use of it to gratify their suspicions, their hatred, or their caprice: one applies it to conversation (t), another to silence (u); this to signs; that to dreams (x); whoever will not worship the player, or the gladia-

guet perhaps, has disputed the ability of Augustus, notwithstanding he committed several great political errors. But his talents served only to strengthen that despotism, which afterwards let loose so many evils on the Romans; and this alone is sufficient to prevent his reign from appearing either glorious or respectable. Rome was happy under the reign of Augustus, because such was the interest of the despot. Otherwise would Octavius have been deterred from violence? Octavius? that Octavius who, in answer to supplications, said, *They must all die*; and sacrificed three hundred senators, the day of the ides of March, on an altar consecrated to Cæsar? (Sueton. in Aug. 15.) Mr. de la Harpe, whose opinion I am here controverting, has well observed in his fragments on the twelve Cæsars, that *the more blood a man has shed, the more he likes it*. Whatever may have been the motives of the moderation of Augustus, I request Mr. de la Harpe, who unites a very correct understanding with more brilliant, but not more precious talents, I request the author of *Melanie*, the eloquent panegyrist of Fénélon, and of Catinat, to reflect whether any thing can expiate the horrid crime of adopting Tiberius, and paving the way to Nero.

(r) Montesquieu. *Grandeur & décadence*, &c.

(s) The crime of lese majesty was at first, as we know, an offence of high treason against the Roman people. As tribunes of the people, Augustus and Tiberius, (and not Tiberius alone, as Mr. de la Harpe says) applied the epithet of lese majesty to writings, to offences against their persons, and gave an infinite extent to them, as we shall see by their progress.

(t) Sueton. in Ner. cap. XXXII.

(u) *Julian law*.

(x) Under the Roman emperors we find frequent accusations for

gladiator patronized by the prince, and refuses to applaud him in the circus (y); whoever shall fell the emperor's statues (z), or melt them, even though mutilated (a); whoever shall chastise a slave, or undress himself before that sacred image (b); whoever shall carry with him to those places where the wants of nature call him, a piece of money, or a stone engraved with the Emperor's

for *dreams*, accusations which were always followed by punishment. See amongst others the example related by Tacitus, ann. l. XI. 5. There was under Constantius an informer called *Mercury*, of Persian origin, who was called *the Count of dreams*, as it was on dreams he founded the greatest part of his charges, and consequently his fortune. (*Hist. du bas Empire*, edit. in 12mo, vol. II. p. 266.) Marcellus, Eprius and Crispus Vibius acquired, under the reign of Nero, fifty-six millions of livres by this trade. Regulus, whose portrait is given us by Pliny the younger, received from the senate for one single accusation, the consular ornaments, and a present of one million three hundred and sixty thousand livres.

(y) See Sueton. (*in Domitian*. 10.) *Demens ille*, says Pliny the younger, in speaking of this senseless tyrant . . . *qui crimina majestatis in arena colligebat, ac se despici & contemni, nisi etiam gladiatores ejus venerarentur, sibi maledici in illis, suum numen violari interpretabatur*. (Paneg. 33.) It was Trajan who restored to the Romans the liberty of applauding at the theatre. None of the spectators were any longer themselves given as a spectacle, nor expiated by cruel punishments, their fatal pleasures. *Nemo spectator spectaculum factus, miseras voluptates unio & ignibus expiavit*. (Id. *ibid.*)

(z) Two citizens were punished with death under Tiberius, the one for having sold with his gardens the statue of Augustus, and the other for beating a slave who had money about him on which was stamped the head of Tiberius,

(a) Leg. 6. ff. ad leg. jul. mag.

(b) A woman was punished with death under Domitian, for undressing herself before the statue of the emperor. Not only was this image an asylum for the slaves, (Senec. de Clement. l. I. 18.) but the most infamous villains might insult and defame with impunity the honestest man in Rome, provided they held this sacred talisman. See in the annals of Tacitus (l. III. 36.) the complaints of C. Cestius in this respect. Every man, it is there said, quoted similar, and even more striking facts. *Haud dissimilia alii, et quidam atrociora circumstrepabant*.

head,

head (c), shall be GUILTY OF LESE MAJESTY. Do you doubt of the merit of that slave chosen for some employment? you will be prosecuted for sacrilege (d): You have received a violent and irreparable outrage from a favourite; the insufficiency of the law authorises you to avenge yourself; natural right absolves you; the will of the prince creates a crime, as if you had attacked his person: (e) yes, even though you had struck the favourite to save the master (f); (for who knows the extent to which this execrable doctrine may be carried?) and twelve centuries after, some other tyrant may revive this law to crush his enemy (g).

An

(c) Suet. Tib. 58. See a whimsical anecdote on this subject in Seneca. (De benef. III. 26.) Mr. de Montesquieu is of opinion that certain laws of the Emperors only appear to us extremely ridiculous, from our ignorance of the circumstances, or the customs to which they related. But why search after reasons for the senseless caprices of tyranny? The drunkenness of despotism and the abjection of servitude give a solution of them all. The excesses of madness, or of barbarity, that astonish Mr. de Montesquieu, are not more surprising than the laws I have cited in the text, and which neither had, nor could have any other cause.

(d) Sec. at the code of crimin. sacril. *Sacrilegii instar est dubitare an is dignus sit quem elegerit imperator.*

(e) The fifth law ad leg. jul. maj. *Nam ipsi pars corporis nostri sunt.*

(f) "Some of these favourites, says Montesquieu, conspired against the emperors; they did more; they conspired against the empire: They called in the Barbarians, and if one wished to prevent them, one must have been exposed to the crime of lese majesty, to punish them." (*Espirit des loix*, chap. VIII. l. XH.)

(g) It is on this law, that the *Rapporteur* of Mr. de Cinq Mars grounded his argument, when endeavouring to prove him guilty of lese majesty, for trying to expel Cardinal de Richelieu from the ministry, or even to bring him to punishment, he said: "the crime that affects the persons of the ministers of princes, is held, by the constitutions of the emperors, of equal weight with that which affects their persons. A minister is a faithful
" servant

An ever memorable example teaches us what advantages adulation and revenge may derive from vague definitions of the crime of treason in a judicial accusation, in a legal judgment. The following were the motives on which Thrasea Pætus was condemned; that citizen by whose death, says Tacitus, Nero wished to destroy virtue itself (h). Thrasea interested himself but little in the *sports of the young men*, in which the prince prostituted in public all the noblesse of Rome, and his own person (i): he had left the senate when it was in deliberation to extol a parricide, and to brand the memory of Agrippina, assassinated by her son (k). This

“ fervant to his prince, and to his state; he is taken from them
 “ both; that is as if one was to deprive the former of an arm,
 “ and the latter of a part of its power.” *If servitude herself were to come upon earth, she could not speak otherwise*, says Montaigne.

(h) Nero virtutem ipsam excindere concupivit. (Ann. lib. XVI. 21.)

(i) See Ann. of Tacitus, l. XIV. 15. More than this, in the shews of the gladiators, given by Nero in the year of Rome 877, senators even and a great number of illustrious women descended into the arena, and combated there. *Spectacula gladiatorum idem annus habuit pari magnificentia ac priora. Sed feminarum illustrium senatorumque plures per arenam fœdatis sunt*, (Tacit. ann. XV. 32.)

(k) See l. XIV. n. 12. of the Annals of Tacitus, what the senate and the greatest men of Rome were emulous of decreeing in thanksgiving to this parricide; what victims were sacrificed to the protecting gods of the assassin of his mother; what annual games were instituted on the day when the pretended conspiracy of Agrippina was discovered; how the day of his birth was inscribed in the kalendar between the unlucky days. See (ibid. n. 13.) how Nero was congratulated, on re-entering Rome, for having taken care of his safety by the murder of his mother; read, I say, all the fourteenth book, and you will then learn of what flatterers are capable. The senate had also rendered thanksgivings to Tiberius for his clemency, when Agrippina, the virtuous and unfortunate widow of Germanicus, was put to death, because she had not been publicly strangled, and her body not exposed with those of the ordinary malefactors. (Tacit. Ann. VI.

This austere senator absented himself when divine honours were decreed to Poppæa, the favourite accomplice, spouse, and victim of the tyrant ; and he did not assist at her funeral pomp ; “ in short, “ added the accuser, Thrasea never offers sacrifices “ for the preservation of the health of the prince, “ or of his divine voice ; he alone does not honour his talents, and his example will become “ contagious : the armies and the provinces read “ more attentively than heretofore the annals of “ the Roman people, to remark in them, what “ Thrasea has abstained from doing : his obstinate silence disapproves of every thing (1).” Such were the crimes that cost this hero of virtue his life, judged by the senate of Rome ; and they were all juridical, for the law had pronounced that it was a crime of lese majesty to *offend* the emperor ; now there is no doubt that each of these crimes had deeply offended Nero. But Neros are rare. True, but flatterers are not so : the Sejanuses, the Calistuses, the Palases, the Narcissuses, the Tigellinuses, the Iceluses, are of all ages. In all

VI. 25. Suet. Tib. c. 53.) Caracalla consecrated in the Temple of Serapis the sword with which he boasted to have killed his brother Geta. Dion. l. LXXVII. who says also, that the comic poet durst no longer employ the name of Geta in their pieces, and that the goods of those who had named that unhappy prince in their testaments, were confiscated. See how despots can consecrate even their crimes.

(1) *Quod senatu egressus est, quum de Agrippina referretur. . . . Quidque juvenalium ludicro parum expectabilem operam præbuerat. . . . Et quum deum honores Poppea decernerentur, sponte absens, funeri non interfuit. (Ann. l. XVI. 21.) Nunquam pro salute principis, aut cælesti voce immolavisse. . . . Huic uni incolumitas tua sine cura, aries sine honore Diurna populi Romani per provincias, per exercitus, curatius leguntur, ut noscatur quid Thrasea non fuerit, (Ibid. 22.) Facilius perlaturus singula increpantera, quam nunc silentium perferrent omnia damnantis. (Ibid. 28.)*

all courts their principles are the same (m), and adulation will every where be unlimited, where authority is without bounds, and its doctrines will infect all ranks, all professions, all opinions, and all individuals. Hear De Thou, our sage and faithful De Thou; he will tell you, *that in strokes aimed at crowned heads, chance alone is a crime, even when the will is the most innocent.*

(n) Good God! what a maxim! what a perversion of reason and humanity! how prejudice can blind the purest spirits! Undoubtedly the crime of treason is of the highest importance; but fix its nature then; do not diminish its horrors by vague, arbitrary, and absurd definitions (o), by tyrannical

(m) It is generally believed that the modern history of European princes offers nothing to be compared with the traits of tyranny of the Roman Emperors, and with the corruption of their courts. The policy of favourites is, and ever will be, the same, and they are almost always the only persons who govern under absolute princes. The favourites of Richard II. of England published a declaration in London, *that no person should utter any thing whatsoever against them, under pain of confiscation of property.* They compelled the king to promise them on oath, not only, *that he would govern by their counsels, but that he would support and defend them, and that they should live and die with him.* It is said that this king, so dear to his favourites, had marked down the names of six or seven thousand citizens who had given umbrage to him, and whom he was desirous of exterminating at once. He had destined for that purpose, adds Gordon, (Disc. on Tacit.) a cutlass which Providence made use of to sever his head from his body. The services rendered by favourites to their masters would form a curious and useful history.

(n) A propos of the punishment of Montgomery in 1574.

(o) See in the History of England what a weapon the charge of high treason was become in the hands of despotism: you will see there the penalty of death denounced against any person who, being acquainted with the irregularities of the queen, should not declare it, and even against him who knowing that the king was about to marry a damsel who was not a virgin, should hesitate to make it known; against every young woman, in short, who
having

cal and barbarous subdivisions (p); recur to first principles, or you will for ever go astray. A crime of any sort, should be clearly defined by the law, and with the more precision, as it becomes more grave; it ought to be legally proved, and publicly punished. Who then are more interested in this than the magistrates entrusted with the judgment of their fellow citizens, and to vindicate and avenge that authority, of which they are the guardians, and by which alone they exist?

I carry it still farther. The sovereign cannot, without manifest injustice, decide arbitrarily on the fate of a citizen accused, or guilty of a state crime; for it is then that he really becomes at once his accuser, his party, and his judge. We have seen above, that in the sound theory of every government, every infraction of public order, every crime is a personal offence against the sovereign, since those attempts which appear less aimed at him than against the nation, ought to be equally regarded as personal to the chief magistrate, who is no other than the ostensible representative of the invisible body called the public. This is incontestably in speculation the only political existence of a king; but it is too true, that the more absolute a prince is, the more distinct are his interests from those of his people, or at least appear in that light to him. Accustomed to consider nothing but his authority, his passions, his family, he regards himself as a *proprietor*, not as a *trustee*; it is not society he avenges in punishing a state crime; (and
if

having had any weaknesses, should not acquaint the king with it, if he was desirous of taking her to wife, &c.

(p) The ordinance of 1670 (tit. I. art. 11.) says, that the crime of lese majesty, EN TOUS CES CHEFS (in all its degrees) is a royal case. They have reckoned amongst us as many as *eight chefs*, of the crime of lese majesty; and for my part I maintain that without tyranny or nonsense we cannot reckon more than one.

if that were his object, why distrust on that occasion the ordinary judges ?) it is not society, I say, it is himself. Personal interest must fascinate his right, blind his justice, and render him incapable of impartial enquiry ; and *there is no beast more ferocious than man*, says Plutarch (q), *when he unites power with passion*. The sovereign who judges his subject appears altogether like that cowardly and cruel tyrant (r), who combated with a keen edged sword wretches who had only foils tipped with lead for their defence. Though the habit of absolute authority should not have taught him to regard in his kingdom only himself, can it be supposed that a prince, who is a *man*, and often the least informed of all, who is surrounded by *men* the most corrupted, will know, and be willing to adhere to justice ? if he discovers that his suspicions were ill founded, if he feels that he has done an injury, he will add hatred to violence, and his animosity will become only the more implacable. Tacitus, that great searcher of the human heart, who is so often right when he reveals to us our perverseness, Tacitus wrote eighteen centuries ago, *we naturally hate those whom we have injured* (s). How then escape from the prince, from his resentments, his vengeance, his errors ? how shall the private property of the citizens be respected, when their interests happen to clash with those of their MASTER, whilst we every day see his passions, or those of his ministers lead him to interpose partially his authority in contestations between one individual and another, which have no connection whatever with the sovereign ?

There exists a plot, a crime of state, that is, a very great crime. Perhaps it is believed, perhaps
also

(q) Plut. Cic.

(r) Commodus.

(s) *Proprium humani ingenii est odisse quem læseris.* (Agric. 42.)

also it is an injurious suspicion. If the intentions of the prince be really pure, he has the less interest in withdrawing the person accused from the hands of the magistracy, as the truth will certainly be more scrupulously examined into by them than by his ministers, overloaded with so many other affairs, and parties besides, almost of necessity in all the intrigues. If his intentions be not pure, the wretched citizen you abandon to his mercy will be surely massacred, or will never again see the light. Ministers and courtiers, those ferocious and cowardly courtiers who counsel crimes, and commend them, will eagerly exclaim, that a feeble individual is nothing in comparison with that privileged being on whose fate hinges the happiness of a nation; that when a prince hates or fears, every thing is already examined; that his safety is incompatible with a tardy justice, and that his interest alone, on which depend so many different interests, constitutes a crime, or innocence (t). These are the principles and the language of all courts. Does it become the ministers of justice to propagate and defend them? alas! what did that slavish senate do more, who condemned such unfortunate men, as were marked out to them by the tyrant, *as less guilty than suspicious* (u)? The parliaments applaud themselves for having always avoided the discussion of the respective rights of the prince and of the nation, in order to prevent distrust and fermentation, not to stir with an indiscreet hand,

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(t) See the speech of Mathan in the tragedy of Athaliah.

(u) *Novio Prisco, per amicitiam Senecæ & Glitio Gallo atque Annio Pollioni, INFAMATIS MAGIS QUAM CONVICTIS data exilia.* (Tacit. Ann. XV. 71.) Others were stripped of their employments, not for having betrayed the emperor; but because they passed for persons who hated him. *Exsuti dehinc tribunatu Pompeius, Cornelius Martialis, Flavius Nepos, Statius Domitius quasi principem non quidem odissent, sed tamen existimarentur.* (Ibid.)

the sacred boundaries which separate monarchy from despotism, and to prevent the religious veil that covers them from being torn off (x). But is there any thing to be boasted of in this conduct? is it noble and generous? is it even prudent? is it really useful to authority? enough and too long have we been blinded by *religious veils*. Ignorance has always, and ever will, make slaves and tyrants. *Reasons of state* have every where, and at all times disguised the attacks on the liberty of nations. *State strokes* have been crimes in all ages, and from one end of the globe to the other. Every *mysterious administration* has been, and will be ignorant, disastrous, corrupt, corrupting, and tyrannical: all truths are necessary and useful to mankind; all error is fatal to them (y). These are maxims incontestibly taught us by reason and experience, and that the whole body of history has demonstrated beyond a reply; for the past so clearly marks what is to be expected from the future, that there are no secrets, says Swift, either in the cabinets, or in the minds of ministers themselves. They who disguise, or restrain these principles, merit rather the reproaches, than the gratitude of the people whose miseries they will continue to deplore, as long as they will not teach

(x) See all the remonstrances relative to my subject, and particularly those of 1770 and 1771.

(y) "Truth is a necessary want of man; it is above all a necessary want of states: every abuse arises from an error: every crime, whether private or public, is no more than a false calculation. There is a degree of knowledge wherein good would be inevitable. To accelerate that moment we must accelerate information." These beautiful expressions are of the worthy and eloquent Mr. Thomas, whose writings and whose virtues form so excellent and so affecting an apology of that philosophy, calumniated by so many wicked, blind and ungrateful men. (See his disc. of reception at the French Academy.) France and Europe have just lost this great, and noble character!—1785. TRANSLATOR.)

teach them their rights ; and I doubt much whether at bottom, they serve their prince better than their countrymen. Almost all the troubles that have agitated governments have been produced by the complication of different branches of authority, whose limits have never been marked with precision. Subjects and kings must gain therefore by introducing more accuracy and good faith into the researches relative to objects of such importance. The true end of all government being to check private disorder, and to maintain the public tranquillity, the only basis of authority is opinion ; but it is on that very account that its rights and its duties ought to be more carefully ascertained. This may be done without diminishing any of the respect due to it from the people ; for it is to legitimate authority, to a tutelary and beneficent authority, it owes respect, and the doctrine of resistance can only apply to an authority evidently founded on tyranny or usurpation. In politics, any more than in religion, I do not see what is to be gained by saying BELIEVE EVERY THING, for one point rejected, the rest fall to the ground. Would not the best means of ensuring obedience therefore be to ascertain those cases wherein it should cease to be a duty ? For slaves do not obey : they endure : they are beings purely passive. If in a convulsion of grief they become active, it is to overthrow every thing ; it is to get drunk with the blood of their oppressors, and to fall back into the lethargy of servitude. When every mind is debased, and every heart alienated, there may exist a vain and illusory authority, but there is no real power. Subordination therefore is only to be expected from free men ; but they can never doubt that there are certain circumstances wherein obedience would be
a crime,

a crime, and it is well if they do not waver in that delicate research. The doctrine of unlimited obedience has therefore this inconvenience, for those even whom it favours, that it is absurd. The VEIL has this danger for sovereigns who interpose it between themselves and their people, that the latter may mistrust whatever it conceals ; let not frivolous scruples then restrain the pen or the voice of philosophers, magistrates, or citizens. Let us establish the maxims of natural right, of immutable and eternal justice, without compromise and without reservation.

NO PERSON CAN IN ANY CASE be legitimately condemned but by the laws, and those laws impressed with all the characters of equity and authenticity, which it can alone make them binding. NO PERSON CAN IN ANY CASE be legitimately condemned but by magistrates appointed to compare his conduct with the laws. Alas ! that is quite enough ; it is doubtless too much, that he must be judged by magistrates named by the king himself in trials between the king and his subject ? This prerogative alone is sufficient to make liberty tremble, without giving a scope to the continued possibility of false suppositions, arbitrary suspicions, tyrannical pretexts, every thing in short that Swift calls *court expedients* (z), to finish its destruction.

Observe (and this very important remark is of that celebrated Englishman) that every plot discovered, so far from giving room to greater apprehensions, and authorizing illegal precautions, contributes to strengthen the established authority, since every plan of the conspiracy is broken. The
conspi-

(z) Cardinal Mazarin boasted that with two lines of any man's hand writing he could, by a very few circumstances proved by witnesses, take his life away at pleasure. (See the life of St. Evremont.)

conspirators therefore must begin every thing anew, and under greater disadvantages than before. So that enquiries into doubtful projects are in fact a snare for prepossession and credulity; and these principles, whereby a citizen, whose physiognomy unfortunately displeases a man in place, is threatened with the dreary abode of a prison, have no solid ground to rest on, even in the instance the most favourable to the partizans of arbitrary orders, when the times are turbulent and menace authority.

But far be from us that erroneous opinion, that licentiousness is the extreme of liberty. It is precisely the contrary. It is government by the will of some individuals, in opposition to the will and the interest of the social body, recognized and manifested by the laws. Licentiousness is the slavery of the weakest, or the least resolute, and the despotism of the most daring, and the most powerful. Now the liberty of individuals is the basis of public liberty, and the chief end of every equitable government. Liberty therefore is at an infinite distance from licentiousness: it is despotism that borders on licentiousness, and not liberty. *It is he, says Helvetius, who like the empire of chaos, described by Milton, stretches his pavillion over a dry and desolate abyss, where confusion, interwoven with itself, maintains the anarchy and discord of the elements, and rules every atom with a sceptre of iron.* (a) Despotism is no other than the licentiousness of a few great men, alternately the favourites and the victims, the props and the scourges, the despots and the slaves of the despot. This is the reason why this form of government, if it deserves that name, springs out of, and almost always perishes

(a) *De l'esprit*. Dif. III. chap. XVII.

by anarchy. Now this licentiousness of the great is infinitely more fatal than that of the small, which cannot be durable. The want of combination, of means, of consistence, very soon destroys it: this poison carries its remedy along with it; despotism is an evil infinitely more terrible than this licentiousness, nay, even than anarchy, because it is perpetually increasing, and is sustained by all the power, and all the strength of the government; because it degrades man, by bending him under the weight of his chains, by benumbing his faculties with a mortal stupor; because it cannot be overcome but by those convulsive efforts of which the social body is scarcely capable, nearly annihilated as it is by the spirit of servitude; until the excess of tyranny shall awaken every mind, open every eye, raise up every head, and shew liberty to all men as the first gift of heaven, the first right of human nature, the first seed of happiness and of virtue.

Let us conclude from hence that licentiousness and despotism are very nearly allied, both of them fatal, though in different degrees, for despotism is infinitely the most dangerous; both of them incompatible with private and public liberty, which is the true end of government. Let us above all conclude, that the pretended fear of abuses is a criminal pretext when it tends to rob men of their natural or lawfully acquired rights; for where is that fear to cease, which is the constant plea of authority? *From apprehension to apprehension, says a man of sense and merit (b), all liberty, and even existence will in the end be destroyed: to day you will*

(b) The Abbé Roubaud.

enchain my hand, to-morrow you will tear out my tongue : the next day I shall be no more.

Let us compare facts with these principles, and support one by the other.

C H A P. VII.

Proofs of fact. Limited authority has always been the most stable. The government in France has nothing to fear but its own excesses. Despotism has always produced revolutions ; and the union of the legislative, the executive, and judicial powers have always produced despotism.

WERE we to credit the declamations of writers in the pay of despotism, or the prejudices of those nobles proud of SERVING A MASTER, of knowing no other law but his will, and who, with the purest conviction in the world, esteem themselves respectable only in proportion as their servitude is more or less rigorous, we must absolutely conclude, that free constitutions are an inexhaustible volcano of conspiracies, revolts, and crimes, and that men are more wicked as they become more happy, for these cowardly or credulous slaves look for tranquillity, good police, and security for the people and their chiefs, power, force, and even HONOUR from the irresistible authority alone
of

of an absolute monarch. Every historical monument however testifies that the freest nations on the earth have been the most virtuous ; that no authority was ever more unstable than arbitrary power, and that the throne of despotism is perpetually stained with blood ; whilst in limited monarchies the law protects the sovereign as well as his subjects. It was when the English were not free, that their country was rent in pieces, for five centuries, by eight civil wars, and nineteen rebellions (c). Had the unhappy Charles, when he assumed the sceptre in England, found the constitution as established after the terrible catastrophe that put an end to his reign, he never would have borne his *uncrowned* head to the scaffold. His subjects would not have been goaded, even to fury, by a long and intolerable tyranny : they would not have been so easily drenched with the poison of fanaticism : it would not have cost them twenty years of calamity and oppression to regain their liberty, and thirty more of violent ferment and convulsion to consolidate it : in a word, the English would never have mutilated themselves to break their chains, since vigorous and well supported laws would have served at once as a check, and a shield to the monarch.

Were the plenitude of despotism a sure pledge for the stability of an empire, there never was unquestionably a better constituted government than

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that

(c) From the Conquest to the Revolution inclusively. I shall only add to this, one observation I find in Harrison, and which the registers of all the tribunals of Europe would more or less confirm, in proportion to the multiplicity and defects of the laws, and the rigour of the government. Under the reign of Henry VIII. from 1509 to 1547, 72000 criminals were put to death in England, or about six a day. At present scarcely one hundred are sentenced to die in a year. (*This calculation is considerably below the truth, but not so as to affect the truth of the general observation of Mr. de Mirabeau.*) TRANSLATOR.

that of Rome, where the leaders were above all law. In vain should we object to the inconveniences of a military constitution, from whence resulted the seditions of the armies, which finished, by setting up at auction the sceptre of the world : this was, and ever will be, the necessary consequence of despotism, which may sheathe the sword, but never can lay it totally aside. Regular troops, standing armies, which never have been, which are not, nor ever will be, good for any thing but to establish and maintain arbitrary authority (*d*), will inevitably acquire the ascendant in that

(*d*) I expect to be charged with exaggeration. There is, however, no political truth more just, or more easily demonstrable, though more generally opposite to common prejudices. I cannot here enter into a detail of the proofs, which would form matter for a distinct work. I shall only remark on the weakness of the principal arguments made use of to prove the necessity of regular troops. The science of war, say they, is so changed, that it is no longer possible to place any confidence in militia. Besides, troops always kept on foot ensure the internal tranquility of a state, as well as defend it against external insults. It is enough for one power to have an army on foot to oblige its neighbours to imitate the example, in order to prevent its hostile enterprizes. The officers, likewise, amongst whom are always some men of property and note, will be at all times interested in opposing any project of reducing their countrymen to slavery. I answer,—First, That it is easy to prove from facts that the defence of the different European states, and particularly that of France, has never been essentially more feeble than since the establishment of regular troops ; the reign of Louis XIV. that entirely military reign, affords the most striking proofs of this truth, which the author of the *Testament of Cardinal Alberoni*, a work full of great and profound views, has perfectly established. Secondly, A militia is as susceptible of discipline as regular troops, and has stronger incentives to courage and perseverance. Military history would confirm this truth as clearly as it is established by political notions, and I would not advise the most warlike mercenaries of Europe to go and manœuvre before the habitations of the Swiss peasantry, unless indeed their union, their government, and manners, should undergo great changes, which is much to be feared. Observe that

that authority. Force, of which they are the cause and the effect, the origin and instrument, is

that their superiority is not to be attributed to the nature of their country. Every informed man, who has viewed it with a military and impartial eye, knows, that though thick set with mountains, it is every where open. But he who is happy, and who fights for his property, is from that alone a very formidable foldier. The English countryman will fight like the Swiss mountaineer as long as he is free. Every man who has served, knows of how little real service are those modern legerdemain tricks, which are necessary to occupy the idle foldier in his garrison, and make the fortune of a few staff-officers. I doubt much whether those brave Americans who are opening at length an asylum for liberty, almost expelled from the rest of the earth, make use of the Prussian exercise. Thirdly, In a well regulated state the civil magistrate is able to maintain internal peace; and every law that the civil power is incapable of carrying into execution is certainly an oppression, or a scheme tending to favour, or to introduce it. Fourthly, In the actual system of European politics there are no longer any great invasions, or important conquests to apprehend. All princes watch each other too closely, to render any violent and sudden change of domination much to be apprehended; besides, such is the progress of the arts, that no nation of Europe has advantage enough over another to subjugate it. Almost all the modern states too, feeble from their constitution, labouring under internal maladies, exhausted by the misconduct of their chiefs, are unable to attempt, or to sustain for any long time, any great enterprizes. (See on this head the excellent observations of Mr. L'Abbé de Mably, in his principles of negociations, which I do not pretend wholly to adopt in other respects.) To speak out, in short, the art of war is so declined, whether it be from the rage for great armies, and the nature of their composition, or from the predominant systems of artillery, become the sole arbiter of combats, that great conquests appear to me absolutely impossible. I do not say, however, that there is nothing to fear from great confederations, and from treaties. It seems that this is the most modern, and the only possible means of conquering. Were I a Swiss, methinks I should be upon my guard. But the rage for regular, and innumerable troops will accelerate, rather than retard the danger. The soldiers, necessary to enslave a people they are supposed to defend, will never be able to preserve the frontiers of a large state from invasion; but that invasion will be of no effect in a free country, where there is a good militia, and no malecontents.

is the sole resource of despots. It is true that it is the weapon of those likewise who wish to overthrow them ; and when the liberties of a people are invaded, what signifies to them the change of masters, if the revolution strikes only at the throne and the armies ? They often entertain such a hatred of the despot, as to rejoice at the public losses, and wish for the success of the enemy (*e*). But the inconveniencies of military sway and despotism are necessary parts of the same whole. The oppressors dread the oppressed ; they feel that they have no other method to maintain illegal authority,

malecontents. Fifthly, General and uncontradicted experience informs us, that such nations as have suffered great armies to be formed, and to subsist in their bosom, have been reduced to slavery by these mercenaries, uninterested in the public weal, the devoted satellites of the despot on whom they depend, and, from their very constitution, the blind instruments of arbitrary power. Those persons of note are easily got quit of, who, from their principles of honour and of patriotism, might preserve a spirit of liberty and of discussion incompatible with military discipline, and the mandates of a prince who aims to despotism. But such men will always constitute the smallest number. Personal bravery is a vulgar quality, acquired by the habit of danger. The firm and inflexible love of liberty is a courage very rare, which supposes personal disinterestedness and moderation, the most eminent of all the social virtues. The means of seduction, in the hands of the ministry, enable them to sway the crowd. He who distributes the daily pay of pensions, and of ranks, will ever be the sovereign of the military. Ambition, cupidity, and that sort of point of honour to do what is called one's DUTY, without examining whether there be not a prior one, destroys all principle, and dissipates every scruple. Passive obedience becomes the *esprit de corps* ; and the habit of a profession, wherein despotism is an essential ingredient, soon renders a man a perfect slave in theory and in practice, without his feeling the least repugnance, or even dreaming of his servitude. Besides, despotism does not make use of the military to destroy those who oppose it, but to restrain such as might be tempted to make the trial, and that is sufficient.

(*e*) *Multi odio præsentium suis quisque periculis lætabantur.*
(Tacit.)

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than by the edge of the sword. Corruption and venality prepare the chains for a free people ; but it is the legionary power, and the legionary power alone, that links and rivets their fetters. Ministers feel a very different degree of courage in conceiving and executing their plans of oppression, when they see themselves surrounded by some thousands of satellites, from what they experience when contending with free men, by means of skill and cunning, when not backed by force. As long, therefore, as the arbitrary projects of a prince are matured in the dark recesses of his cabinet, or that his concealed enterprizes are circulated through the channel of his *unarmed* emissaries, clear sighted patriots may be able to unmask this edifice of corruption, and the people, undeceived, may easily counteract the wicked men who plot their ruin : but if they accustom themselves to behold mercenary bands at the doors of their peaceable dwellings, they will very soon be enslaved : they will be so even without a blow : for when men see those swords turned against them which they have imprudently suffered to be lifted up in their defence, they are struck with terror, and rather suffer the constitution to be overturned, than to become its martyrs. And oh ! ye fortunate nations, who have known how to preserve yourselves hitherto from the universal contagion, admit not any exceptions to these principles ! Relax but ever so little from that continual vigilance the preservation of your liberty demands, and your chiefs will enrich themselves with your negligence and your losses. The slightest innovations of this kind are a sufficient groundwork for despotism ; pretexts never will be wanting to augment the army, when you have once authorized its existence ; arbitrary power will elevate itself by crouching, until the favourable moment

moment comes, when, rearing up its lofty head, it breaks down your privileges and your liberties with its iron sceptre.

Since despotism indispensably requires a great number of troops, the evils resulting from the perpetuation of great armies ought to be reckoned in the number of the disadvantages attending that form of government. The troubles which the soldiery, become insatiable from their number, and the weakness of the state, three things inseparably connected, and which progressively increase (*f*), the troubles, I say, which these mercenaries excited at Rome and at Byzantium, far from authorising us to cite the Roman empire as an exception,

(*f*) The Roman empire under Augustus had twenty-three legions; under Tiberius twenty-five; under Adrian thirty. It had under Galba three hundred and seventy-two thousand men for its defence, half Roman, and half auxiliary troops. The greatest powers of Europe, who in general possess only dismembered portions of the Roman empire, habitually keep in pay almost as many troops. Their number was continually on the increase at Rome, and at Byzantium, and we know how those phantoms of armies, without vigour, (*nomen magis exercitus, quam robur*, Tacit.) those legions, reduced to a vain name, (*inania legionum nomina*, Tacit.) those soldiers, formidable only to their hosts, (*tantum hospitibus metuendos*, Tacit.) defended the emperors and the empire. The armies, says Tacitus, were only composed of bodies without vigour, and dejected souls. Veterans were seen in them who had never mounted guard, and for whom the sight of an intrenchment or a palisado was a surprising and novel spectacle. *Satis constitit fuisse in coexercitu veteranos qui non stationem, non vigilas inissent, vallum, fossamque, quasi nova et mira viderent.* (Tacit. Ann. XIII. 35.) Their languid march presented to the eye nothing but broken ranks, soldiers, who could scarcely carry their arms, lazy horses, troops who could neither bear the sun, nor the dust, nor the weather, and the more ripe for revolt, as they had less strength to support their labours. (*Non vigor corporibus, non ardor animus; lentum et rarum agmen, fluxa arma, segnes equi: impatientes solis, pulveris, tempestatum; quantumque habes ad sustinendum laborem miles tanto ad discordias promptior.* Tacit. hist. l. II. 49.)

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in reality points it out as the example of all states conducted on the same principles (*g*). If the effect be slower in our modern kingdoms, it is not the less infallible, and this difference hinges on some circumstances, which it is not here the place to develope. Let us consult with confidence then the Roman history, that inexhaustible source of political lessons for every constitution.

From the battle of Actium down to Constantine, that is, to the division of the empire; for after that revolution this theatre of anarchy, of misery, and theological disputes, no longer merits observation; in that space, of something more than three centuries (*h*), forty-eight emperors were recognized at Rome, and by the senate. I reckon only those, for the number of persons who usurped the title of Cæsar, and who were obeyed by certain provinces, is incalculable. The Augustal history alone, which comprehends, from Adrian to Carinus, a period of one hundred and seventy years, shews us no less than seventy Cæsars. Of the forty-eight emperors recognized at Rome, thirty-seven perished by poison and the steel. Eleven only died a natural death, and one of them languished several years in a cruel captivity (*i*); the other was indebted to a forced abdication for his safety (*k*). The greatest part of

(*g*) The wise Artaxerxes said, "that the authority of the monarch must be supported by military force. That force can only be maintained by imposts. All imposts fall at length on agriculture, and agriculture will never flourish but under shelter of justice and moderation." (D'Herbelot, Bibl. or. on the word *Ardshir*.) Unfortunately, moderation and justice will never long subsist in countries where the authority of the monarch is supported by a military force.

(*h*) Three hundred and forty-four years, Constantine included.

(*i*) Valerian, defeated by Sapor, and who died in his captivity, from whence his barbarous son never would relieve him.

(*k*) Diocletian.

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these princes, monsters devoted for ever to the public execration, and whose very name has become *a cruel reproach for the most cruel tyrants*; the greatest part of these princes, I say, confined in their solitary retreats, which they never quitted but to desolate Rome, did not they find in them an asylum? No: in these very places, where they promised themselves so much security, they shut up with them treasons, snares, and that God, the avenger of their crimes (l); and villains skilled in the art of poisoning, preciousy preserved as the necessary instruments of him who wished to reign (m), were alternately the slaves and punishers of tyranny.

The French monarchy has lasted near fourteen centuries, and it is not above two since the use of lettres de cachet has become common, or their name even known: it is not above three hundred years since we have had regular troops. It is hardly more than a century and a half since the nation has lost with its states-general, the power of concurrence in the establishment of imposts, and the remains of the government of Charlemagne. In this monarchy, wherein the authority was so long limited, the sixty-sixth king is beginning his reign. Let us enlarge on this observation.

Three dynasties have governed the French: two revolutions have changed the order of succession. Both of them were occasioned by the violation, or the enfeebling of the laws and customs. The mayors of the palace, the counts of Paris did not dispossess their masters until they had changed the constitution, and attacked private and public liber-

(l) Plin. Panegy.

(m) *Deligitur artifex talium vocabulo locusta, nuper veneficii damnata, et diu inter instrumenta regni habita.* (Tacit. Ann. XII. 66.)

ty (n). Assign, if you can, any other cause for our late civil wars than the establishment of arbitrary authority; the daring and tyrannical disposition of the Guises, and of Richlieu; the insatiable desire of wealth and power of his crafty successor; the despotism of ministers, in a word, who thought, and do imagine, they have carried every point, when terror or weakness have deprived the body politic of motion.

Turn over the annals of Asia, in short, take a cursory view of those countries desolated by barbarous Africans, and determine whether these impenetrable seraglios, which are rather besieged than defended by armed cohorts (o), afford a safer asylum than the Louvre, encompassed by a multitude of mild, faithful, and confiding subjects. Decide whether the most insolent tyranny, and the audacious soldiery, which overthrow, as often as they serve it, are pledges of security; whether force is a better guard than confidence and love; and if princes do not make themselves sufficiently feared, when their people fear for them (p).

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(n) Cardinal de Retz made this remark. (See the notes at the end of this work.) It is not improper to observe, that religion has furnished her prettexts also, in each of these great events. Charles Martel *wished only to defend Christianity* against the Saracens, when he got himself elected *prince of the French*, under the reign of Clotarius. Capet *wished above all* to restore to the churches of France the property of which they had been stripped. It is probable enough that, but for the premature death of Henry de Guise, the *holy league* would have overturned the throne of the Bourbons.

(o) *Isicimus experimento fidelissimam esse custodiam principis ipsius innocentiam. Hæc arx inaccessa, hoc inexpugnabile munimentum, munimento non egere. Frustra se terrore succinxerit qui septas caritate non fuerit: armis etiam arma provocantur.* (Plin. Pan.) *Unam est inexpugnabile munimentum, amor civium. Quid pulchrius est quam vivere optantibus cunctis?* (Senec. de Clement. lib. l. c. 19.)

(p) Mr. de Champfort puts the following beautiful words into the mouth of a Sultan:

Monarques

Are they not ashamed in France to speak of the *necessity* of preventing conspiracies, plots, and revolts? It was that detestable calumny that deprived Louis XIV. of a million of industrious and faithful subjects, to whose ancestors he owed his crown. He was made to dread a sect which preferred flight to resistance, and the edict of Nantes was revoked. Does not the profound and immediate obedience paid to these arbitrary orders, the utility of which is so much boasted, prove them to be superfluous for the maintenance of the regal authority? What! one word from the sovereign, his signature, or even its counterfeit, deprives, exiles, banishes. At the sight of it the citizen bends his head; he flies; he abandons his habitation; he goes to confine himself in the most melancholy situations marked out for him; and a prince thus obeyed, has he any thing to fear? But he must be continually gaining some advantage over his people! After depriving them of all their privileges, he must attack what remains of their civil liberty! He must totally annihilate the safeguard of the laws which he himself has made, and which he modifies at his pleasure! The legislative and executive, the civil and the military, powers are united in his hand, which possesses besides all the means of attack and of corruption; the power of levying indefinite taxes, of extorting gold, and lavishing it, of naming to the dignities of the priesthood, and consequently of dictating to its ministers; of distributing the political offices of the robe and of the

Monarques des Chrétiens que je vous porte envie !
 Moins craints et plus chéris, vous êtes plus heureux ;
 Vous voyez de vos loix vos peuples amoureux
 Joindre un plus doux hommage à leur obéissance ;
 Ou si quelque coupable a besoin d'indulgence,
 Vos cœurs à la pitié peuvent s'abandonner,
 ET SANS EFFROID DU MOINS, VOUS POUVEZ PARDONNER.

The last verse appears to me perfectly beautiful.

sword :

sword : is not so enormous a power sufficient to put the administration out of danger, unless it should overturn itself by its own excesses? *From the most ancient period*, says the celebrated Guicciardini (q), *the French nation has not borne less reverence to their kings than is bestowed on the Deity*. If this sentiment be diminished, it is because the private interest of ministers always urges them to extend the royal prerogative beyond the bounds of justice and good sense : it is because they are much more attentive to their own personal, precarious, and momentary authority, than to the genuine and lasting power of their masters. They have cured us of our enthusiasm by the urgent pressure of our evils, by the incessant parade of their despotism : they have taught us our rights by their audacious violations of them, and by the extreme maladroitness of their manœuvres. But the French monarch is still *the most a king of all the mortal kings* (r), if he will be just and moderate. Our nation, extremely sanguine, naturally gay, although a long series of oppression has considerably changed that happy disposition, not at all given to reflection, and of course inconsistent, as ill-informed of every thing respecting the government as if they had no concern with it (s), since every possible means has been employed to divert them from this important study ; our nation will discover as late as possible, that it depends only on her masters to make her suffer the last outrages of despotism : she will long continue to tranquillize herself under this idea, because she has not yet experienced them all ; and I shall point out very soon what has saved her from them : she will regard with an indulgent eye her sovereign

(q) L. II. No. 12.

(r) Hesiod speaking of Minos.

(s) *Inscitia reip. ut alienæ.* (Tacit.)

making laws, after having deprived her of the right of concurrence ; enjoying the power of compelling their execution ; arbitrarily commanding three hundred thousand disciplined, and perpetually armed men, who look up to no other than him, who live on his pay, without ever reflecting that it is the pay of the people ; who are proud of serving one man, whilst they should consider themselves as destined only to the defence of their country ; who fly to obey the orders of him whom they call their *master*, without reflecting that they reduce themselves to wear a livery rather than a uniform ; without knowing that the vilest, the most odious, the most detestable of professions, is that of a satellite of a despot, the gaoler of one's brethren. But should the prince come to brave the public opinion, which is his best safeguard, and the foundation of his power ; should he *will* every thing, because he can do every thing ; should he dare to sit in judgment ; should he, who institutes and abolishes the laws, order or suspend their exercise as his fancy dictates, or at the pleasure of his ministers and favourites ; should it become evident that regular troops serve only to keep the citizens in chains, for the purpose of subjecting them to the caprices of some proud, iniquitous, and greedy masters ; should all hearts be alienated, and lose even hope, they will soon shake off fear ; the illusion will vanish : the French must be made to perceive, that the Eastern potentates do not possess a more despotic power than their king ; that their condition is no better than that of the 'Turks ; that Paris is no freer than Constantinople, where at least there are Christian churches, whereas we see no mosques in our immense capital, nor even temples for other sects of Christians (t).

Alas !

(t) Temples ! ——— Protestants have no civil state in France : every just man shudders at the idea. Setting aside every discussion

Alas! who, that reflects ever so little, is ignorant, that the judicial power vested in our tribunals constitutes almost the only difference between our government, and that of the wretched Asiatics?

sion of toleration, and without proposing even the least favour in the world to the exercise of the reformed religion, nor to admit those who profess it to any public employment, I ask, at least, why they do not obtain for themselves what is granted to the Jews throughout the whole kingdom, what the Protestant princes never refused to Catholics, nor the heathen emperors themselves to the Christians they persecuted; I mean a legal method of providing for the establishment of their children? After the revocation of the edict of Nantes, it was barbarously or foolishly imagined, that by avoiding an explanation on this subject, so dreadful a state of uncertainty for the Protestants, joined to other vexations which were let loose against them, would induce their conversion. They are not however forbidden to marry. The government affected to believe that there were no more Protestants in the kingdom; and this senseless fiction was looked upon as a political chef-d'œuvre. The declaration of the 9th of April, 1736, on the burial of those who are denied ecclesiastical sepulture, gave hopes that the government was about to take under consideration their births and marriages. The public expectation was deceived. There are reckoned upwards of four hundred thousand marriages since the year 1740, contracted in the deserts, a fertile source of scandalous processes and infamous iniquities. In whatever manner the courts of justice, perplexed between the natural law and the letter of positive laws, decide, their decisions are attacked, and the fate of the judgments is as uncertain as the judgments themselves. The security, the condition, the fortune, of two millions of citizens depend on the fluctuating systems of a ministry; and fresh emigrations will consummate the evil which we already suffer from ancient and irreparable losses. Let them still say, that the laws of Louis XIV. against the Protestants are so fallen into disuse, that it is unnecessary to abrogate them.

This is an extract from the discourse Mr. de la Brétignieres had the truly civic courage to present, on the 15th of December, 1778, to the parliament of Paris which gave no other answer, than-----THERE IS NO ROOM FOR DELIBERATION. (Il n'y a lieu à deliberer.) NO ROOM FOR DELIBERATION! Just heaven! and the interest of two millions of citizens is at stake. Be that as it may, the homage of gratitude we owe to that noble action of Mr. de la Brétignieres ought to be consigned here.

These

These unhappy slaves take occasional vengeance on their tyrants ; they do not hence become more free, 'tis true, because they have no idea of their rights, nor of liberty ; because servitude cemented by ignorance is become their habitual mode of existence, and the excess of grief and of oppression produces only in their benumbed and extinguished souls a momentary and sterile convulsion : but for us, who have still some little energy ! for us, whose understandings are enlightened !—O ye ministers ! O ye European princes ! your moderation is, and will continue to be, the only pledge of your impunity : be discreet in the exercise of your power, if you wish to preserve that power. There is no servitude which does not leave a door open for liberty.

But you, ye people ! open the annals of the world : you will see, in all times, in all countries, the union of the three powers immediately followed by the total subversion of liberty. You will see the use of this immense prerogative become so insupportable to the Greeks, that they expel their kings, and annihilate royalty (u).

Popular government succeeds it : the imprudence of wholly entrusting this terrible power to the same magistrates, makes other tyrants spring up in the midst of these tumultuous and corrupted democracies ; and the most fatal blow given by victorious and jealous Sparta to humbled Athens, is to name thirty magistrates, to whom all authority is committed (x). They arm their satellites :

(u) The heroic times. In the same manner Carthage at first obeyed kings, who were not long in getting themselves expelled.

(x) This was the destructive policy of Sparta to oppress all Greece. When Athens was no longer able to counterbalance her power, Thebes, Olinthus, Phliontes, Corinth, Argos, Bœotia, received tyrants from her hands, and the Lacedæmonians at length experienced the same fate.

they

they condemn arbitrarily : they execute as arbitrarily : they confiscate property at will : they sacrifice every thing that resists their fury, *and put more citizens to death in eight months peace, than the enemy had slain during a war of thirty years* (y). They impress dread and horror : they oppress, they desolate, and annihilate their country.

The Egyptians, with whom I ought to have begun, subject to a theocracy, and consequently to the completest despotism, are for some time happy under that dreadful government, because the authority of public manners was the check of their sovereigns ; but very soon passions, and absolute power, which seconds them so well, produce in their understandings, and in their hearts, their usual effect. The ambitious Sesostris appears upon the throne : every thing is changed, and Egypt, regarded as the asylum of wisdom, was plunged into the most profound servitude ; the unfortunate victim of ignorant, voluptuous, cruel, and suspicious tyrants, she fell a certain prey to whosoever wished to conquer her.

Tarquin unites, at Rome, the power of the sword with that of making laws, and that of judging. He exterminates the senators, harasses the people, and exercises an unbounded authority, without any moderation (z).

The people awaken from their lethargy, rise, and trample to the earth their despot : liberty revives ; a feeble glimmering, half stifled by aristocratical oppression ; for the great had seized on all the offices. A remedy is sought against the patri-

(y) Xenophon.

(z) He seized, as if by hereditary right, the crown, which had been elective until the time of Servius Tullius. He usurped the legislative power, which he united with the other two enjoyed by his predecessors.

cian usurpations, the plebeian dissensions, against the exorbitant pretensions of the tribunes, against the general ferment: ten men are chosen: (a) legislation, judgment, execution, every thing is deposited in their hands, and these ten men are as arbitrary, as cruel, as tyrannical as Tarquin.

Rome is enslaved: the sword, which produced her triumphs, overthrows her tumultuous liberty, and the world is avenged. The generals of her conquering armies, those enemies of every nation, disdain the quality of citizens. The lost republic receives in her bosom the swords of the victors and the vanquished (b), and trembles at the sight of her own eagles. The masters of so many kings, besieged within their own walls, fall slaves to an ambitious, weak, or furious tyrant: the emperors concenter in themselves the functions of the senate, the jurisdiction of the magistrates, the power of the laws. Expiring humanity gives way, and palpitates under the strokes of the most frantic despotism (c).

Alas! why look so far for what is before our eyes, for what presses so hard on our own breasts and hearts? Almost all Europe has beheld its political and civil liberty crumbling under the weight of this union of the three powers. It has been too easy a task for princes to destroy the privileges of their people. All the sovereigns of this beautiful
quarter

(a) The decemvirs.

(b) *Seneca de ira*, l. III. 18.

(c) *Munia senatus, magistratum, legum in se trahere.* (Tacit. Ann. I. 2.) *Ferocious people*, said Seneca in speaking of the combats of the gladiators, and of the pleasure the Romans took in them, *knowest thou not that bad examples recoil on him who gives them? Thou teachest cruelty to thy prince.* (Epist. 7.) See the history of the West, which conquered the East, and established throughout a military despotism. As to the times prior to this conquest, we know what the oriental governments always were.

quarter of the world descended from a long race of kings. They had in their favour names, to which almost alone mankind attach themselves. The nations in general, horribly tired of the feudal anarchy, might, from despair perhaps, have preferred the despotism of one man : they had no just idea of a limited monarchy, which depends on political knowledge, nay, even on philosophical meditations, from which they were many centuries distant ; what could an assembly of ignorant and barbarous chiefs foresee ; what could they enact, knowing nothing but the chace and war, cantoned in their estates and their forests ; incapable of studying their laws, and their history, setting no value on any thing but force and pride, and destitute of the slightest notion of genuine liberty, the rights of man, the interests of their country or their political relations ? What rational and wise system of legislation could proceed from the rustic hands of these violent warriors, who, confiding in their arms for present and future events, never even thought that the established government could change ? Of little consequence was it to them, they thought, who made and promulgated the laws, since it was always in their power to stay their execution. Prudent precautions, moderate limitations, an active vigilance, were as incompatible with their impetuous characters, and their profound ignorance, as reasonable concessions, and a well-founded subordination. When princes seized the sword, the only barrier opposed to them by the feudal constitutions, for they had no regularly determined limits, that only barrier was overthrown. They retained at first the greatest part of the ancient forms, and, if I may be allowed to say so, the same appearances of government (d). The royal prerogative

K 2

gative

(d) This was precisely the conduct pursued by Augustus. He preserved all the exterior form of the government, and, as Tacitus

gative augmented to an almost inconceivable point, before it was suspected that royalty became a magistracy of another kind. Usurpations, gradually exercised, inspired no jealousy, and when Europe discovered her chains, they were already rivetted, thanks to the formidable and fatal establishment of standing armies, of which our Charles VII. gave the signal and example to all sovereigns ; if the despotism which rules her be not totally tyrannical, let her return thanks to the progress of information, to that philosophy which has humanized manners, to the arts, which have inspired taste, and discovered the variety of pleasures ; perhaps also to the unvigorous stamp of modern souls, which exhibit only wicked and abortive beings (e), and which give feeble masters to feeble men.—Let a Richelieu or a Cromwell spring up anew. But no ; may pitying Heaven never more visit the nations with such dreadful scourges !

Tacitus says, even the names of the magistracy. (*Eadem magistratum vocabula.*) Robertson very justly remarks, that this system is not an invention of modern politics, and that it has been employed at all times, and in all countries, in the West, and in the East, to cover usurpations, and to cloke tyranny.

(e) Terra malos homines nunc educat, atque pufillos :

Ergo Deus quicumque aspexerit, ridet et odit.

(Juv. Sat. XV.)

C H A P. VIII.

Wherever monarchy is not limited, chance alone can preserve it from tyranny. Refutation of the principles of the æconomists in this respect. Government never ceases to be responsible for particular inconveniencies, except when it does not pervert the course of the laws. When it pretends to do every thing of itself, despotism and all its consequences are inevitable.

IT is too generally believed that liberty exists wherever there are no tyrants ; and this is a very dangerous error. Wherever a single man has the power of legislation, without restriction, and without participation, and that of compelling the execution of his decrees, so that the despotic authority, which must be found somewhere in all governments, is absolutely concentrated in him alone, and that he subjects a whole people to laws by which he himself is not in any manner bound ; wherever one being exercises such an act of authority over other beings of the same species, as if he were possessed of absolute perfection, this man will find himself a tyrant, if he be wicked, or even only feeble, and should have about him bad men, who enjoy his confidence. Tyranny therefore may be the work of a moment in a government that varies with its kings and ministers. The national character perhaps will be proof against them, if it be not yet degenerated, and if that character be gay, frivolous, and flexible, softened and modified by

by the irresistible influence of the amiable sex on the sex endowed with strength, it will temper those terrible inconveniencies which may and must result from arbitrary power (f); this safeguard however depends absolutely on circumstances. Should a ferocious and sanguinary prince spring up, an enemy to the pleasures of peace, and whose manners are in opposition to the manners of his people; should a minister appear, despotic as they all are when they have it in their power, and possessed of a genius which hardly appears once in a century; should he have the mastery over men's minds, instead of being under their dominion; should he beset his master (g); should he subdue him; he will be fired even at the accidental, gentle, and inactive resistance he may meet with from the prejudices of his countrymen; he will destroy those whom he cannot corrupt: he will overthrow every thing: he will put the nation in irons: the excesses of his tyranny may perhaps awaken her: but what evils before the crisis arrives! and what evils still to follow! Wherever monarchy therefore is not limited, there is not, neither can there be, liberty; at the utmost, there are but momentary intervals of repose, which produce a fatal security, give root to passive obedience, and in no sense secure the public safety, and that of individuals.

Certain modern writers, known by the name of *œconomists*, are in this respect diametrically opposite to my principles: they condemn all political counterpoises; from observing them all settled in every govern-

(f) This is precisely what has saved us from the last outrages of despotism.

(g) *Claudentes principem suum, et agentes ante omnia ne quid sciat.* (Lamprid. in vit. Alex. Sev.) Behold the description of all ministers, as far at least as they are able.

government, they are led to regard them as useless and dangerous. They persist in comparing the sovereign authority with the paternal, that old philosophical dream, as ancient as the world, captivating in theory, but evidently false, and still more pernicious in practice. Were kings even to consider themselves as *the fathers* of their *people*, and not as the *proprietors* of their kingdom, and of some millions of men who inhabit it; were it probable that, in a constitution calculated for the interests of one man, that privileged being should deign seriously to consult the happiness of those of whom he is the absolute master, and sacrifice to them his caprices and his passions; were the sovereign of the French to look upon himself as the head of a numerous family, and not the lord paramount of a fine estate, called *France*, (h), from which he has a right to draw as much as he can; should all his successors have the same principles, the same sentiments, the same degree of knowledge with himself, I should still ask, whether good fathers are never bad administrators? Whether there are not instances of bad fathers? Are there not even parricides? Alas! what should we think of our criminal and civil laws, if they delivered over their children to the mercy of every citizen? What do we think of the first Romans, on the bare supposition, which is more than doubtful, of their ever having exercised that abominable right: (i)—that they shocked reason, and made nature shudder.

(h) L'Oyseau calls despots *des monarques seigneuriaux*.

(i) Mr. Perrenot, it appears to me, has very clearly proved, that the father, amongst the Romans, never possessed the right of killing, of selling, nor even of exposing his new-born child. The *Jus Quiritium*, a privilege peculiar to the Romans, and unknown to every other nation, that *paternal majesty of a domestic judge*, (for these

shudder. The sovereign authority, according to the œconomists doctrine, should have no other check than *instruction*, and that is enough. This idea is precisely a chimera, but a chimera visibly tending to introduce despotism.

Instruction is without doubt the first safeguard of man against man, since by shewing him in his fellow-creatures the same passions as his own, and superior force, it makes him foresee contradictions and resistances. The more, doubtless, the knowledge of natural rights, from whence follows that of our duties, shall be universally diffused, the more obstacles will despotism have to overcome to establish itself. Without doubt, if a prince greedy of arbitrary power assumed the reins of government in a free and perfectly enlightened nation, he would be prudent and moderate, or very soon expelled. But who dares to engage, that instruction will ever be so universal as that the resistance it shall produce will be able to defeat the enterprizes of despotism; that mercenary soldiers, instead of being the instruments of oppression, shall become, in case of need, the enemies of the oppressor; that, if they persist in fighting against liberty, in favour of those who pay them, disarmed peasants, or undisciplined artisans shall dare to face them, and know how to conquer them? Will instruction give

these were the proper and the consecrated terms,) consisted in a particular tribunal, where the father accused his son, criminal and obstinate in his want of duty, before his relations, some friends, or neighbours, who sat as judges, and who, after mature deliberation, declared the son innocent or guilty, and in the latter case, pronounced sentence of imprisonment, the whip, exile, or even death. (See *Abrahami Perrenot, iſti, fasciculus primus exercitationum*, &c. tome I. dissert. II. Groninguen, 1775. See also the *Roman antiquities of Dionysius of Halicarnassus*, lib. II. sect. 15. and, *Gravina de jure naturali gentium*, sect. 31.)

the

the military virtues also, if the constitution has destroyed even the very seeds of them? The most eloquent of the Greeks, the most impassioned for liberty, fled in the field of battle; so feeble a pledge of that vulgar quality, called valour, is courage of the mind. Demosthenes however, though almost as bad a politician, as he was a great orator, was full as well informed as your labourers will ever be. But were the triumph of the citizens over the Janissaries certain, it were much better to prevent that cruel extremity, which must cost so much blood to the conquerors, and weaken them by the loss even of the conquered. A too imprudent confidence, as well as a too long patience, may and ought to bring on this fatal crisis. In vain will they urge, that *the interest of the prince and the nation being indivisible, tyranny is a real suicide, rendered impossible by the progress of instruction*. I am acquainted with all these common-place sayings, which have been so often repeated without effect: I know that the truth of these principles can be demonstrated even by the most palpable evidence; but there is no irresistible evidence for the passions; for were there any, since the lapse of so many centuries that these maxims have been uttered, and that they are violated in defiance of their acknowledged truth, there would no longer be either slaves or tyrants. The best form of government, says the ingenious Mandeville (k), is that which adopts the justest measures against human wickedness; for all possible governments would be excellent were we disposed to be honest men. Let us not give ourselves up then to vague speculations, let us view men as they are, and not as we frame them in our Platonic dreams. If we can do it, if it can be our duty to save from the effects

(k) Of government in general, and in particular of the English government, by B. Mandeville.

effects of his own madness the man who is driven by it to attempt his own life, still more does it behove us to restrain, or what is much better, to prevent, the excesses of those men, whose reason or whose folly decides on the happiness or the misery of nations ! Alas ! who can take upon him to engage, that the love of good will ever be so universal as to become the reciprocal bond between prince and subject : that general information will acquire such an empire over the passions, as to form, so to speak, a public conscience, which shall prescribe the laws of order to the governors and the governed ; which shall be the guide, the revered despot, of mankind, and, as the English express it, *the united wisdom of nations* ? Experience constantly belies all these speculations.

These writers are continually quoting the example of China ; and our books of political œconomy are become mere Chinese romances. But if every thing we are told of it were true ; if all those who have written on that country were agreed, instead of contradicting each other on almost every point, the Chinese legislation would still be nothing but a pure and simple despotism, tempered by local circumstances, and above all by fear. The despots are not tyrants in that empire, (some such are mentioned however, and by much the greater number), because they see perpetually suspended over their heads millions of arms, which a famine may set at work to tear them to pieces ; and they know, by frequent experience, that the excess of despotism, or even its errors, may occasion that famine in a moment. The security of the Chinese depends on their excessive population, which arises in a great measure from their temperament, their climate, and their despair. But still what victims must be illegally sacrificed until the moment of the crisis !

crisis! The following well-known anecdote has been much quoted as a proof of the influence and power of instruction in the empire of China. A Chinese, full of indignation at the oppression his countrymen were groaning under, presents himself to the emperor, and says to him; "I am come
 " to offer myself to that punishment, to which six
 " hundred of my fellow-citizens have been already
 " dragged for similar representations, and I warn
 " thee to prepare thyself for fresh executions.
 " China still possesses eighteen hundred thousand
 " fellow-countrymen, who will come successively
 " to demand of thee the same recompense, for the
 " same cause." The tyrant, frightened, reflected with himself, and ceased his bloody executions—I ask, in the first place, if it was very necessary for six hundred virtuous citizens to lose their lives in order to disarm the despot, and if the constitution, by which they lost it, is an admirable one? I would then ask, if that be a happy country, where, out of one hundred millions of men, only eighteen hundred thousand good patriots are to be found? I ask, in short, if those men, so ready fruitlessly to devote themselves to the fury of a tyrant, really merited this title, or that of virtuous men; and if they had a very accurate idea of their duties as citizens? (1)

To prove the excellence of the Chinese constitution, it is observed, that the Tartars, in conquering that empire, have always adopted the manners and the laws of the subjugated nation, and that the wisdom of the vanquished has thus saved them from the misfortunes which generally follow these terrible revolutions, by subjecting the conquerors to their laws. But this proves absolutely nothing.
 Besides

(1) The solution of this last question is very important, and I do not despair of being able to give it in another work.

Besides that the Tartars becoming sedentary, must naturally find it more simple and commodious to adopt the laws of the conquered people, than to frame a new legislation, of which their former wandering life had not even given an idea ; is it not apparent, that the conquerors, having always been in the enslaved countries, as one to ten or twelve thousand, the government of an innumerable people must necessarily become that of a handful of men, by whom they were subjugated ? This pretended triumph is the necessary result of things, and the most complete proof of the cowardice of the Chinese. Had they defended themselves better, and had equally fallen, the destruction would have been greater, and the influence of the conquered over the conquerors still less considerable. When the Roman empire was ravaged by torrents of barbarians, who exterminated the greatest part of the native inhabitants, scarcely did there remain a few slight vestiges of the laws and the arts of the Romans. When the Saxons destroyed the Britons, and established their domination in England, they annihilated all prior institutions. The Normans in their turn oppressed the Saxons ; but so easily, that the vanquished still continued to be much more numerous than the victors. England has preserved more laws of Saxon than of Norman origin. It must be confessed therefore that the invasions of the Tartars prove the pusillanimity of the Chinese, and that the incorporation of the former amongst the latter by no means proves the excellence of the Chinese legislation. National cowardice, on the contrary, is a vice that depends in great measure, if not entirely, on the constitution, and is almost an inevitable consequence of despotism, of the discipline of the sabre, or what is still more humiliating, the bamboo. Alas !
what

what legislation could the Tartar princes leave more readily to this weak people, than that which had delivered them into their hands without resistance? Certainly the principal duty of a wise legislator is to procure forces for the state, capable of defending its territories, its laws, and liberties. Every political system, which is deficient in excellent military establishments, or rather, which does not give to a people the military spirit so necessary for its preservation, (a spirit, by the bye, diametrically opposite to legionary fury), every political system, I say, destitute of that spring, is defective; and for this reason I shall never reckon William Penn, otherwise so respectable, in the number of great legislators (m). By thus attacking, inch by inch, the gigantic edifice, elevated by the enthusiastic partizans of the Chinese government, it would very soon be overthrown, if we joined, above all, the criticism of facts undertaken by the learned and ingenious Mr. Pauw, who is oftener in the right perhaps than is imagined, when he lowers the reputation of this people of slaves, possessed neither of energy of soul, nor understanding. I shall urge this discussion no farther; but if it be true, as has been so often repeated, that it is the despotism of the laws

(m) This so important a defect in his system of legislation has a very sensible influence at this day on the constitution of *the United States of America*. Pennsylvania, which appears to me in other respects the best organized, if I may be allowed the expression, permits every man, who, being called on by the state, is unwilling to serve, to furnish another soldier as his substitute, or even to pay a sum of money in lieu of service; thus have this people, the most respectable in the universe, those brave and generous Americans, who aspire at liberty, already set a pecuniary price on human blood; and the service of the country, and its defence, will be entrusted to strangers or to wretched mercenaries. I am much mistaken if any more be necessary to prepare the way for the slavery of a nation. New Jersey and the state of Delaware have adopted this plan of the Pennsylvanians.

laws that reigns in China through the influence of instruction, I ask of the œconomists, I demand of the enemies of political counterpoises, of the contemners of limited monarchies, if they have a promise from the European despots that they will suffer information to be diffused, so as that it may one day produce such admirable fruit in their dominions? If such be their intention, they take a very indirect method of making so valuable a present to mankind, and I doubt whether those who have the good fortune to live under a limited monarchy, will relinquish to their princes an absolute authority, under the expectation that instruction will enlighten and restrain them. I am no stranger to all the merit of the œconomical doctrine: I know that it is adopted and propagated by men of excellent understanding, and I could cite one amongst them who thinks every thing I have been saying, and would express it much better than me, if he durst; but man enchains himself by ranging himself under the banners of a sect, and this is the reason why genuine philosophy, which tolerates them all, flies enthusiasm, and the name (n). Let us drop the discussion of sects, and above all, let us hate tyranny, and every thing that has a tendency towards it.

Nations will ever be the sport of one man, or of a small number, as long as their legislations shall not limit the authority of their chiefs, so that they can have no enjoyment but from the public felicity. If they are at full liberty to make an arbitrary use of their power, they will always put themselves above the rules of justice, should they even injure
their

(n) This is the idea given us by Mr. Diderot of the genuine eclectic philosophy, in the beautiful picture he has drawn of the history and doctrine of eclecticism. (See this excellent article in the *Encyclopédie*.)

their private interests, since he who can do every thing knows no other interest than the momentary impulse of his will, or of his fancy. This is attested by the history of man, as well as that of his actions. Moderation was never long in alliance with unlimited power, and justice is only to be found under the reign of moderation. The annals of the most despotic monarchs who ever lived, I mean the Roman emperors, and the oriental princes, present us with acts of madness and ferocity, and of fatal catastrophes, no where else to be met with. Their administration was so disastrous, only because their authority was without bounds. If the Roman despots only were in question, their excesses perhaps might be imputed solely to the natural disposition of these sanguinary monsters, however astonishing it might appear, that, in so short a period, so many savage tyrants should have succeeded each other from the pure effect of chance. If Asia alone presented these frightful scenes, the mad passions of her masters, and their furies, might be attributed to the climate. But Greece has been free, and England was enslaved. Do the Muscovite despots appear less madmen than the tyrants of Asia? When we behold the East and the West sullied with the same transgression, the burning South and the frozen North presenting us with the same crimes, under the same constitution, it cannot be denied that they are produced by the nature of the government, and not by the climate, or the private character of the prince. The most essential interest of mankind therefore is to ensure their liberty by laws, the execution of which cannot be evaded, nor their course interrupted (o).

Then

(o) See on this subject all the third book of the laws of Plato, where he examines and perfectly decides the cause of the downfall

Then alone will the supreme administrator be no longer responsible for private inconveniencies; then may he, then ought he, even to turn his eyes from them, if, to remedy them, it be necessary to violate those rules which are of general acknowledged utility. Princes, who pay no respect to any, hear their beneficence blazoned every day, even beyond the limits of the country where their despotism compels the lie or silence. Thanks to our base flatteries, whilst they are desolating immense countries, over which they have no other right than the claims of the most immoderate ambition, they think themselves acquitted towards humanity, conscientiously perhaps, for having done two or three good actions that cost them nothing but the will; that interest only two or three individuals; that put the courtiers in rapture, and excite the enthusiasm of fools. Shall we always continue to betray the truth, even for those whom we have no interest to flatter? Shall we perpetually conspire against our own tranquillity, and that of our fellow-creatures? We deify those actions, at which the most ordinary being, the most vulgar mind, would blush to hesitate; when the éclat of the crown publishes them to the world, we preserve a cowardly silence. What do I say? Our eulogiums are the most frequently lavished on crimes which would arm human tribunals against any other

of empires. Without offence to the economists, Plato was a very great man, and he is far from being of their opinion. A divine spirit in a human form, says he, in speaking of Lycurgus, of whom the economists think very little, as of all those who are not of their sect, seeing the power of kings still too absolute, softened and tempered it by intermingling the wisdom of the senate, and by equalizing the authority of the twenty-eight senators who composed it, with that of the laws.

other than princes. We must certainly entertain a strange idea of what they are capable of doing! Let us cease to confound their duties and our own, and to separate their morality from ours. They are not in a situation to employ themselves with details in which they are most frequently deceived, and into which they scarcely ever enter but to the prejudice of the laws, and the legal jurisdictions; but they owe us, above all, the example of that justice they force us to respect. Alas! what avails it to humanity, devoted to suffer almost equally from their errors and their crimes, desolated by their passions, their pleasures, their fury, their sports, their caprices, their union, their quarrels; what avails it to Europe, divided between some individuals, who seem to have prescribed separate laws, separate principles, and separate interests for themselves, and to regard the morality of the rest of mankind as a prejudice deserving only their contempt; what avails it to Europe, that her masters, whose power is daily increasing, and whose confederacy is a hundred times more formidable than their most bloody wars, since it announces only the terrible peace of servitude (p); since treaties henceforth will

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be

(p) Oh! how this terrible prophecy is verifying itself every day. Conquerors at least were only guilty of great crimes, consecrated by great examples, justified and made honourable by great dangers; but the strong of the present day conspire with cowardice against the feeble, and in an instant liberty will cease to be upon the earth.

YE PEOPLE, who seem to forget that the word *Republic* is but an empty sound without republican manners, and republican virtues; that the constitutive weakness of small confederated states can only be compensated by a gentle and paternal administration, and the most inviolable respect for civil liberty; BEHOLD GENEVA! Geneva, who never played important scenes in the fatal dramas of conquerors; but who struggled with heroism and perseverance

be decided at the will or fancy of five or six despots of the liberty, the property, and the lives of men : since arbitrary power will display on every side a menacing front, an impregnable rampart ; of what avail is it to us, I say, that pride or pity, the sensations of a moment, or the tricks of self-love, wring from our princes sterile tears, unfruitful maxims, or interested gifts ? Can a few obscure bounties atone for enormous crimes ? No, no, undoubtedly : the goodness of kings is the

perseverance for more than six centuries against the stratagems and the violence of despotism ; who produced more than one great man, and (a rarer treasure in modern times) a great number of good and virtuous citizens ; who, amidst the almost universal servitude of Europe, afforded an asylum for liberty of thought, and in this sluggish and effeminate age gave more examples of a bold understanding and firmness of mind, than the great political and warlike powers have given of martial valour : Geneva, where we found but yesterday a national character, the love of the laws, the simple manners of free states, and public and private virtues : Geneva, who owes every thing to herself, and scarcely any thing to nature, unless the beauty and salubrity of her situation : Geneva, a memorable example of the astonishing degree of prosperity to which liberty can attain : Geneva would yet have been free, had not the judicial power resided in tribunals, made at once judges and parties, by a singular constitution ; if, at all times attached to the vain idea of their independence, the Genevans had not suffered from magistrates they themselves had chosen, what they never submitted to from their cruellest external enemies ; if they had sufficiently secured their individual liberty ; if the aristocracy, foaming with rage at hearing the people appealing to their laws, had not given a mortal stab to their country by drawing on it the sword, or what is tantamount, the mediation of the powerful ; if the virtues of republics, in short, were not displeasing to kings, and still more, if possible, to the aristocracy. . . But let us leave to the young and virtuous citizen, who, at the age of twenty-four, has merited the honour of being proscribed, the sad duty of immortalizing the misfortunes and the revolutions of his country ; let us only say to all Europe : Nations ! if it be not yet too late, reject the peace prescribed by kings. Their bounties are more fatal than their resentments.

hatred

hatred of bad men (*q*); their beneficence is vigilance and integrity (*r*); their liberality is œconomy; their justice is a respect for mankind, and an observance of natural and positive laws. Let them be bad towards bad men, or rather, let them be just towards all, they will always be good enough: it can only be their duty to do what they can. *The law*, says Mr. d'Aguesseau, *is answerable for the inconveniencies that sometimes arise in following it; but man is responsible for those which happen when he swerves from its regulations.* If magistrates are not infallible, nor even incorruptible; if laws, cloathed with the public consent, proved by experience, weighed in the balance of natural right, of humanity, of reason, have yet some defects, either of foresight, of precision, or perspicuity; if forms the most simplified, the best understood, for the interest of justice and of truth, involve some delays, these are the inevitable consequences of human imperfection, which will diminish by the efforts of good minds, the communication of knowledge, the progress, the universality, the liberty, of information; but the evils which follow from the destruction of order, usurpations on the laws, from favour, ignorance, precipitation, removals, or arbitrary power: all these evils, I say, are the vices of the government, and the crimes of the sovereign, who transgresses his rights, and betrays his duties; and all the fine pretexts with which he

(*q*) *La haine des méchans est la bonté des rois.* I do not recollect the name of the modern poet who is the author of this beautiful verse.

(*r*) *Amicos si malos reperit, aut si victus amicitia vel necessitudine, nescierit puniri, saltem dimittit à se dicens, his carior est mihi tota respublica.* (Lamprid. in vita Alex. Sev.)

may cover his fatal usurpations, will only be so many manœuvres of despotism.

“ If there should one day be established,” says the Marquis de Mirabeau (s), overseers of justice, of the police, and of the finances, these men, like the *missi dominici* of the emperors, who destroyed all order in the Roman empire, and prepared its downfall, by driving the people in the provinces to despair, will become every thing in the state; and thirty-two men only will be necessary to govern the kingdom.”

Now if you wish to know in what manner these *Prætors*, or, to speak French, these *Intendants* conduct themselves, when they enjoy a perfect confidence, an unlimited power, read the history of those Roman magistrates who united in their persons all the civil and military power. They were almost like so many tyrants, who thought themselves armed with the fasces, and the axes, and invested with authority, only to exercise open robbery with impunity in their provinces, to force all the barriers of justice and of modesty; inso-much that no man could place either his goods, or his house, his life, or his honour in safety (t). Read the portrait of Verres (u), delineated by a great

(s) *Ami des hommes*, tome II. edit. in-12, page 99. The Marquis de Mirabeau, author of that celebrated work, is the father of the Count de Mirabeau, our author. (Translator.)

(t) *Nunquam tibi venit in mentem, non tibi idcirco fasces & securæ, & tantam imperii vim, tantamque ornamentorum omnium dignitatem datam, ut earum rerum vi & auctoritate, ut omnia repagula juris, pudoris, & officii perfringeres, ut omnium bona prædam tuam duceres; nullius restuta, nullius aomus clausa, nullius vita septa, nullius pudicitia munita contra tuam cupiditatem & audaciam posset esse.* (Cic. Verr. VII. 39.)

(u) I cite Verres as the best known example; but instances of crimes still more horrible than his, if possible, are not rare on the part of the Roman governors or prætors. Quintus Flaminius, of the

great master, from indisputable facts, and whose truth is established by an authentic judgment. See him tormenting the Sicilians in all imaginable ways, trampling under foot all their privileges, and all their laws, and making his caprices, or those of the courtezan Chelido, the only measure of all his judgments; see him harrassing the wretched peasants he was deputed to protect and encourage, plundering all the citizens with an avidity approaching to fury; despoiling the cities, the temples, the houses of individuals, and making them regret their Dionysiuses and Phalarises. See how this merciless extortioner got rid of those who might have been able to accuse him.

“ The unhappy persons he had condemned
 “ were shut up in a prison: preparations were
 “ made for their punishment, and their parents
 “ were tormented before hand, by depriving them
 “ of the consolation of seeing their children, of
 “ supplying them with nourishment, and other
 “ comforts they stood in need of. Fathers and
 “ mothers lay at the doors of the prison, where

the consular dignity, who commanded in Gaul, had with him a young man for whom he entertained an infamous passion. A noble Gaul came to pay his court to him at his supper. *Wilt thou, says the proconsul to his minion, since we have no gladiators here, see this Gaul die?* The other having made a sign in the affirmative, the magistrate rises up, and gives the stranger a blow on the head with his sword, in the middle of his compliment: he then pursues him, and stabs the unfortunate man, who invoked in vain the faith of the Roman people, and the succour of the assistants. (See Tir. Liv. l. XXXIX.) Triarius said to Scaurus, whose accuser he was, *the law authorises me to examine one hundred and twenty witnesses: if you can produce that number of inhabitants of the island of Sardinia from whom you have taken nothing, I consent to your acquittal.* (Val. Maxim. VIII. 1.) Similar examples might be multiplied for ever. The Roman history, whether in the times of the republic, or in those of the emperors, presents us in every page with accusations against oppressions without bounds, and without humanity.

“ they

“ they passed whole nights, being refused the
 “ liberty of embracing their children. They
 “ asked only the permission to receive their last
 “ sighs. Before the gate stood the gaoler, the
 “ Prætor’s executioner, the terror and the death
 “ of the citizens; in a word, the licitor Sestius,
 “ who drew a tribute from all the tears he made
 “ them shed.—*To go in you must give so much;*
 “ *.... to carry food so much. . . . nobody refused.*
 “ *..... But what will you give me to kill your son*
 “ *at one blow? that he may not suffer long? that he*
 “ *may not receive many strokes? that he may lose*
 “ *his life without feeling pain?* The licitor
 “ was paid even for this fatal service O in-
 “ conceivable pain! O! situation the most cruel
 “ and unheard of! Fathers were compelled to
 “ give money, not to save the lives of their sons,
 “ but to accelerate their deaths; and the sons
 “ themselves negotiated with Sestius the favour
 “ of a single blow: as the last proof of their ten-
 “ derness, they entreated their parents to render
 “ this executioner more tractable by money, and
 “ to diminish their torments. . . . Here is with-
 “ out doubt much rigour exercised towards these
 “ unfortunate fathers; but may the death of their
 “ sons, at last, be the last. . . . No! it will
 “ not be the last. . . . Can cruelty then extend
 “ beyond this life? . . . Means will still be found;
 “ for after their children shall be executed, their
 “ bodies will be exposed to the wild beasts. If
 “ this be the completion of a father’s grief, let
 “ him purchase at least with money the liberty
 “ of bestowing sepulture upon his child
 “ (x)”

But

(x) *Includuntur in carcerem condemnati : supplicium constituitur*
in illos : sumitur de miseris parentibus navarchorum. Prohibentur
ad

But what is there in common with us and these horrors?—Nothing, but that which conducts infallibly to them—**ARBITRARY POWER**. It is not because the Triumvirs were cruel that they were absolute; but because they were absolute, that they were cruel.—We are still far from these excesses of tyranny—Yes, because the shedding of blood is repugnant to our manners; but manners may change, and they do change every day; and despotism has rendered them at all times effeminate and atrocious: (y) **HE IS GUILTY OF ALL THE INJUSTICES, AND ALL THE CRIMES OF MEN**; it is the sage Polybius who speaks thus.

Besides,

ad filios suos: prohibentur liberis suis cibum, vestitumque ferre. Patres.—Jacebant in limine, matresque miseræ pernoctabant ad ostium carceris, ab extremo liberum conspectu exclusæ; quæ nihil aliud orabant, nisi ut filiorum extremum spiritum ore encipere sibi liceret. Aderat janitor carceris, carnifex prætoris, mors, terrorque sociorum & civium licitor Sestius, cui ex omni gemitu doloreque certa merces comparabatur. Ut adeas tantum dabis: ut cibum tibi introferre liceat tantum. Nemo recusabat. Quid? Ut uno ictu securis afferram mortem filio tuo, quid dabis? Ne diu crucietur. Ne sæpius feriat; ne cum sensu doloris aliquo, aut cruciati spiritum auferatur. Etiam ob hanc causam pecunia licitori dabatur. O magnum atque intolerandum dolorem! O gravem acerbamque fortunam! Non vitam liberum, sed mortis celeritatem pretio redimere cogebantur parentes: atque ipsi etiam adolescentes cum Sestio de eadem plaga & de uno illo ictu loquebantur. Multi & graves dolores inventi parentibus & propinquis: multi: verum tamen mors sit extrema. Non erit: est ne aliquid ultra, quo progredi crudelitas posset? Reperietur; nam illorum liberi quum erunt securi, percussi & necati, corpora feris objicientur: hoc si luctuosum est parenti, redimat pretio sepelendi potestatem. (Cic. Verr. VII.)

(y) There is a passage of Velleius Paterculus which, when I reflect on the progress of despotism in my own country, I never think of without horror.—“The proscribed found in their wives a perfect fidelity, a moderate attachment in their freed-men and their slaves, **NONE IN THEIR CHILDREN**; so dangerous and seducing is hope to the human mind, and so capable

Besides, I have already said, that death is the most acute, but the shortest and least cruel of sufferings. Visit the prisons, (you will learn in this work what passes in those which are impenetrable) examine the country, observe our colonies, where the governor and the intendant are precisely *absolute*; you will see to what our pity and our moderation are reduced: you will see whether any country

“pable of violating the most holy rights, when they become de-lays and obstacles.” (*Id notandum est fuisse in proscriptos uxorum fidem summum, libertorum mediam, servorum aliquam, filiorum nullam, adeo difficilis est hominibus ut cumque conceptæ spei mora.* Vell. II. 67.) It is true then that despotism can shew us,

*Le fils tout dégoûtant du meurtre de son pere,
Et sa tête à la main demandant son salaire.*

But wives were at least faithful, and even capable of the most generous devotion to their husbands in the time of the proscriptions of the Triumvirate, that is to say, at the moment when despotism commenced its reign at Rome. Two centuries after, when Septimius Severus attained the empire, he found three thousand charges of adultery inscribed on the public rolls; and so general was the depravity of manners, that it was impossible for him ever to attempt a reform. From the reign of Claudius, that is, a little more than half a century after the proscriptions, Seneca said that the women were so indecently clad, that they had no longer any thing to shew their lovers in secret, which they did not shew to the citizens in public; (*De Benef.* l. VII. 9) that the women of the highest rank no longer reckoned their age by the names of the consuls, but by those of their husbands; (*De Benef.* l. III. 16.) that they were arrived at such a pitch, as to marry from no other motive than to give a zest to adultery, and to look upon adultery with one lover only as an ordinary marriage, (*Ibid.* Read all this chapter.) In short, according to the judgment of Tacitus, the want of chastity was become one of the greatest evils of the state. (*Impudicitia magnorum reip. malorum initium fuit*, Ann. XIII. 45.) We must not take the following admirable passage of Juvenal therefore for a poetical exaggeration: *Sævior armis*

Luxuria incubuit, victumque ulciscitur orbem.

More cruel than the sword, the torrent of pleasures deluges our empire, and avenges the conquered world. (*Translator*, after Mr Dufaulx.)

country ever endured more atrocious violences. We are far from beholding the abominable spectacles that Cicero has painted in such an affecting manner, because our prætors do not yet hold the sword; but on the day when it shall be *the good pleasure of the king*, (*le bon plaisir du roi*) they will hold it; because the judicial is still separated from the executive power in ordinary cases; but the exceptions are incessantly multiplying.—But after all, have we never had a Verres? That is what we shall very soon enquire into. But in the mean time, I say, that if the government, concentrating every thing in itself, meddling with every thing, wishing to inspect into every thing, to direct all, to order all, so complicates and multiplies details, and the detailers, that its chiefs become no more than *simple affixers of signatures*, and find themselves overwhelmed in the most profound anarchy, from having strained all the springs of authority; if, as a modern writer has said, the ministers, sold in their formidable cabinets, see their audiences, their moments of repose, their sleep, their hours of amusement, put up to auction (2); if intrigue and corruption have gained all ranks of men from the highest to the lowest; if we adore both men in office, and their *freed-men*; if we prostitute our homages to their upstart slaves, and hold it an honour to claim relationship with their valets;

(2) *Ami des hommes*. And is it not thus in every despotic state?

Omnia Romæ

*Cum pretio. Quid das ut cossum aliquando salutes:
Ut te respiciat clauso vejento labello?*

—————
————— *Præstare tributa clientes
Cogimur Et cultis agere peculia servis.*

(Juven. Sat. 3.)

valets (a); if we see amongst us, on the one hand, effrontery, and the power of doing every thing with impunity, and on the other, a dread of speaking even for the public good, which affects nobody, and of which the desire, proscribed under the name of *enthusiasm*, is become the first and most dangerous of follies; if the military government, in short, is generally established, we are *not* far removed from the last excesses of despotism.

But take heed: what you have been reading of the exactions of the Sicilian prætor, took place in the best days of Rome. When the perpetual dictatorship had brought on the absolute reign of oppression; when the arrets issued by the intendants of the emperors had the same force as his own; when enfranchised slaves, nominated to the administration of his effects, or his domestics, were put upon a footing with himself and the laws; when the decision of all affairs, the fate of the accusers and the accused, shut up in the palace, depended on a small number of persons in favour (b); when every one abandoned himself to the acquiring of money and to intrigue, the earth, streaming with blood, regretted even the Verreses (c); it was then that men offered up as many thanksgivings to the gods, as the prince ordered exiles and

(a) *Etiâ Satrium atque Pomponium venerabamur. Libertis quoque ac janitoribus ejus notescere pro magnifico accipiebatur.* (Tacit. ann. l. VI. 8.)

(b) *Parem vim rerum habendam à procuratoribus suis judicaturam.* (Tacit. ann. XII. 60.) *Quum Claudius libertos quos rei familiari præfecerat, sibi que & legibus adæquaverit.* (Ibid.) *Non enim se negotiorum omnium judicem pro ut clausis unam intra domum accusatoribus & reis, paucorum potentia grassaretur. Nihil in penatibus suis venale aut ambitioni pervium.* (XIII. 4.) This is what Nero promised, and we know that it was the reverse of what was practised before him.

(c) A single trait will give some idea of the manner in which the provinces were treated under the emperors, and of the principles.

and assassinations (*d*); it was then that the empire was seen desolated by unheard-of furies, the seas covered with banished citizens, the rocks stained with blood, Rome given up to the most violent barbarities, nobility, estates, the acceptance, the refusal of honours become crimes, and virtues so many sentences of death; murders and robberies sanctioned by public authority, the assassins of citizens obtaining impunity, riches, and almost even the civic crown; informers loaded with rewards, as odious as their crimes, enjoying as legitimate spoil, some the offices of the priesthood and the consulate, others the public and private management of affairs, at liberty to order every thing, to overturn every thing; hatred and terror raising up the slaves against their masters, the freed-men against their patrons, and, for want of enemies, friends against friends (*e*). And what were the instruments

ciples of those who governed them. Volesius Messala, proconsul of Asia, cut off three hundred heads in one day; then marching amidst the dead bodies, he exclaimed: O THE TRULY ROYAL EXPLOIT! (*Senec. de ira. II. 5.*) See in the Annals of Tacitus (l. XIV.) and in the history of Dion (l. LXII.) the detail of the Roman tyranny in the British isles. Dion speaks of a certain Licinius, a freed-man of Cæsar, who, in his government of the Gauls, under Augustus, divided the year into fourteen months, instead of twelve, because the Gauls paid a certain monthly tribute. The *genius Terrai* (the Abbé Terray, formerly financier of France) has not surpassed this invention by giving a retroactive force to his arrêts of council.

(*d*) *Quotiens fugas & cædes jussit princeps, totiens grates deis actus, quæque rerum secundarum olim tum publicæ cladis insignia fuisse.* (*Tacit. Ann. XIV. 64.*)

(*e*) *Jam vero Italia novis cladibus, vel post longam seculorum seriem repetitis afflicta. Hausta et obruta urbes; fecundissima campaniæ ora, & urbs incendiis vastata, consumptis antiquissimis delubris ipso capitolio civium manibus incenso: polluta cærimonia: magna adulteria: plenum exsiliis maris infecti cædibus scopuli: atrocius in urbe sævitum. Nobilitas, opes, amissi gestique honores*

instruments of this tremendous corruption, of this infernal tyranny? LETTRES DE CACHET, AND THE LEGIONS. They had invented a method of governing much more expeditious than that of prætors, and this method has been again discovered in our days. One single man gave his caprices for law; he commanded those to die whom he hated (*f*); and his friends obtained from him every thing they could desire. One would imagine that one man must be much embarrassed to conduct such vast machines! But not at all. Objects are simplified: the Roman dictator murdered every one who occasioned him uneasiness; we are not so sanguinary, our modern dictators will fill the Bastille, Vincennes, and other places of confinement, where an infant would guard ten thousand persons, when the gates are once shut; all trouble therefore is at an end.—But the people will be enraged—perhaps not: we are so patient! —After all, however, it is but right that every one should have his turn, or the equilibrium of human affairs would be destroyed. *Romans, who bear me, said the Dalmatian baron, if we have revolted, attribute it only to yourselves; you send us wolves,*

pro crimine, & ob virtutes certissimum exitium; nec minus præmia delatorum invisa quam scelera quum alii & inferiorem potentiam agerent, verterent cuncta. Odio & terrore corrupti in dominos servi, in patronos liberti; & quibus durat inimicus per amicos oppressi. (Tacit. hist. I. 2.) See in chapter XX. of *l'Essai sur les éloges de Mr. Thomas*, a fragment of a panegyric of Julian by Libanius, which will give some idea of the plunders committed in the Eastern empire by the officers of the emperors, or their favourites

(*f*) *Is Seneca disposed to part with life?* says Nero. The tribune answers, that Seneca shewed no sign of fear, and that neither his countenance nor his language indicated any melancholy design. *Return then,* says the emperor, *ORDER HIM TO DIE.* (*Ergo regredi & indicere mortem jubetur.* Tacit. Ann. XV. 61.)

evolves, not shepherds, to guard your flocks. Behold the manifesto of every oppressed people. I do not promise you therefore that the prætorian cohorts will not one day make and unmake kings (g); that anarchy will not succeed to despotism, become more feeble from the greater number of soldiers, should these soldiers cease to be faithful; I venture even to predict, that this will happen, for the nature of things cannot change. In the interim there are palliatives. Try to put the whole kingdom into state prisons. That will be expensive; but the expence will be provided for by the estates of the prisoners. Negroes, or white men in chains, will cultivate them; nobody will contradict you now: you will be MASTER; absolute master *by the grace of God*, and of your bolts; and despotism, casting its eyes over vast deserts, will applaud itself for having oppressed every being. . . .

This, this is the situation to which our arbitrary systems must necessarily lead us. For if despotic authority be good, it cannot be rendered too complete, nor too simple; there is therefore no medium: it must either be the absolute reign of the laws, or the absolute reign of despotism. I have just shewn what we should gain by the latter; let us try to discover, independently even of revolutions, so much the nearer at hand as the power is more absolute, what the despot will derive from it, who does not, nor will ever know, that he totters on his throne from the moment that truth ceases to have access to him. . . . The unfortunate man! I see him as great a slave as those he holds in irons. I see him possessed of less credit
in

(g) This revolution was retarded at Rome not quite a century. After the death of Nero, the armies assumed the right of electing the emperors, and never parted with it.

in his empire than the mistresses of the clerks of his visirs. He tramples a whole people under foot; he exposes his crown and his person for the interest of a few men, who get possession of him by all sorts of means, who never lose sight of him, who, in a word, are his masters (*b*), and would soon be his successors, did not intrigue, which besieges the throne, defend it from their attempts, by overthrowing alternately the ambitious and their projects. "My people are my subjects, says this monarch haughtily. Be it so; but thou, what art thou? The subject of thy ministers: and thy ministers, in their turn, what are they? The subjects of their clerks; the valets of their valets. Take all, usurp every thing, and then lavish money by handfuls: prepare the batteries of cannon: erect gibbets and wheels: make laws, issue edicts: multiply spies, soldiers, executioners, chains. . . . Poor insignificant mortals!—Of what use will all this be? You will neither be better served, less robbed, less imposed upon, nor more absolute; you will always continue to say; IT IS OUR WILL, (*nous voulons*); and you will do the will of others (*i*)."

Alas! would it not be better, without giving yourselves so much inquietude, (your clouded brows sufficiently reveal it) without exposing yourselves to so many dangers; (why those prisons, those chains, those innumerable soldiers, did you not fear them;) without lavishing so much gold, (which you

(*h*) Louis XIII. in one of his letters, complains thus of the marechal d'Ancre: *He hinders me, says he, from walking in Paris: he will allow me no more pleasure than that of the chase, and a walk in the Thuilleries: the officers of my household, as well as the rest of my subjects, are forbid to converse with me on serious affairs, and to speak to me in private.* (This anecdote is taken from the book *de l'Esprit*.)

(*i*) Emilius.

you might apply at least to more agreeable purposes) without making so many fellow creatures miserable, the idea of whom is sometimes troublesome, to be yourself unhappy in the end, to pass sovereignly insipid hours, and to be in fact a crowned slave; would it not be better to *will* nothing but what you can, to do nothing but what you ought, to employ men to your profit, instead of oppressing them; and for whom can this profit be greater, than for him who is invested with the public power? who is its representative? who exercises it? I can conceive that ministers, for the most part new men, (*novi homines*) who possessing only a momentary and precarious existence, have every thing to gain, and nothing to lose, may hasten to enlarge as far as possible their fragile authority, to make a rapid fortune, to attach a set of creatures to themselves, to realize their desires. They must avail themselves of the moment; to-morrow they are no more. But that prince born to reign, and who is to die upon the throne; that prince who enjoys a durable power, which he will transmit to his children, injures himself as much as his people by his insatiable and capricious avidity. Why should not he then respect the laws by which he is so favoured? They ensure to him all the power he can exercise, without risk for himself and for others; all their evils will be his doing. It depends solely on him to be, and to make others happy. It is even by this last faculty alone that he can exercise the former. *All that vain shew that surrounds him is for others. The pleasure of doing good belongs exclusively to him: all the rest has its bitterness; this pleasure sweetens all; the joy of doing good is a sweeter, more affecting and a superior sensation to that of receiving it; it is a pleasure that never is worn out; the more we taste it,*

it, the more we render ourselves worthy of that gratification; we accustom ourselves to our own prosperity, and become insensible to it; but we feel a never-ceasing joy in being the author of the public prosperity (k); what more easy, more simple, and more sure, than to fulfil so glorious a destiny? Let the prince place his confidence in laws legitimated by the general consent, assayed by time, consolidated by habit, and which will soon be made perfect, if he wishes to profit by the public knowledge, instead of stifling it; let him place his confidence in these laws: they will relieve him, by diminishing his labour, by ridding him of intriguing courtiers, who will have less to gain about his person; and by this alone will the public manners be reformed; by rendering his revenue an hundred times more, they will proportionally increase his force; they will constitute his security, by multiplying around him men contented with their fortune, by interesting in his behalf every thing which breathes under his protection. I do not know whether all histories impose upon us, but if any thing may be believed, it is evident that they who have violated the laws, have also overthrown empires, whilst, by respecting men and their rights, no harm has ever happened to nations or to sovereigns.

Let us take a cursory view of the objections that may be opposed to these principles. I am very far from wishing to shun any; for it is with sincerity that I seek the truth.

(k) Maffillon, who has nearly copied Seneca here, as in many other places. (Epist. 94.)

C H A P. IX.

Refutation of a principle of Mr. de Montesquieu, who is of opinion, that it is necessary in certain cases to suspend liberty. The iniquity of the ostracism. The censorship. Bill of attainder. Law of Habeas Corpus.

“ I Confess, says the author of the *Spirit of Laws*,
 “ that the practice of the freest nations that ever
 “ were on the earth, induces me to think that
 “ there are certain cases where it may be necessary
 “ to put a momentary veil on liberty, as it was a
 “ custom to conceal the statues of the gods (1).”
 This position undoubtedly merits examination;
 for the testimony of this illustrious and respectable
 philosopher against liberty, which he has at times
 so well defended, though he has not always dared
 to say every thing, is truly formidable. We must
 consider what answer could be made to an apolo-
 gist for *Lettres de Cachet*, who would urge, that,
the most eloquent enemy of despotism believes there are
cases, where a veil must be put on liberty for the
moment.

I might observe, that the example of the ancient
 republics proves nothing in the present case; for
 the custom of accusing individuals in a popular
 state, and of punishing them by acclamation, so
 to speak, that is, without any legal proceeding,
 and in virtue alone of the will of the majority,
 was the exercise the people made of their jurisdic-
 VOL. I. M tion,

(1) Chap. XIX. l. XII.

tion, in the capacity of their own sovereigns. But as it is not true, in my opinion, at least, that society itself united, has the right of arbitrarily punishing one of its members; as I am, besides, very far from giving the republican constitutions of antiquity as an example worthy of imitation, it is the principle of Mr. de Montesquieu, and not solely the application which may be made of it, that I am about to combat.

Let us dare to say it: this great man has embellished a very false maxim, by an imposing image. The people, in the first place, of whom he speaks, are the Athenians above all, who were hardly ever entirely free. Then the ostracism, which is in question, that singular law which attacks only virtue, merit, and talents, and places envy in the seat of justice, is, of itself sufficient to render those republican governments odious (m), and is not the least efficient cause of their instability. Those unjust accusations, which were continually instituted at Greece and Rome, against the citizens the most distinguished by their birth and personal merit, form, says Swift, a cloud of witnesses and examples, more than enough to deter every man possessed of virtue and rare talents from engaging in the service of the public. They
are

(m) Petalism at Syracuse. Laws called *privileges* at Rome, (*de privatis hominibus latae*. Cic. de Leg.) which, at least, were only carried into the assembly of the Comitia by centuries. The laws of the twelve tables also expressly prohibited these acts against individuals, unless preceded by the formal institution of the process. *Vetant leges sacrae XII. tabulae, leges privatis hominibus interrogari: id est enim privilegium.* (Pro dom. 17.) Aristotle expressly says, that all democratical governments adopted the ostracism. Diodorus informs us, that when the Petalism was established at Syracuse, they who were respectable from their birth or personal merit, took flight, so evidently was that law aimed at them; inasmuch that the people themselves were obliged to abolish it.

are highly favourable, on the contrary, to ambitious, interested, intriguing, and evil-intentioned men (n). The ostracism took place in Athens, by the suffrage of six thousand citizens, amongst whom were reckoned a crowd of idle people (o), whose subsistence depended on their suffrages, which they sold to the highest bidder. Let us figure to ourselves what sort of sentence that must be, pronounced by six thousand judges against one individual? We see in that strange tribunal a blind cabal urged on by some knave, or ambitious man, a cabal the more formidable, as it was the more numerous, because the people were then more interested in supporting the infallibility of their judgment. Remark on this subject, that it was by enfeebling the power of the Areopagus, that Pericles, who effected a revolution at Athens, and overturned the institutions of Solon, augmented the force of this tumultuous tribunal to a degree that ruined the republic, by abandoning it to the mad and ambitious passions of its demagogues. Observe, how every fact confirms my principles, how impossible it is for the sovereign to be an equitable judge, and that in every constitution whatever, the union of the judicial, with the other powers, must necessarily involve the subversion of liberty. But let us return to the ostracism.

What vice in a constitution is that law which discourages the men the most useful to the state, because they may possibly become dangerous!

M 2

which

(n) *Discourse of the contests and dissensions between the nobles and commons in Athens and Rome*, chap. IV. vol. III. of his works, edit. in 8vo, London, 1760. This little work was of some use to Mr. de Montesquieu in his greater one upon the Romans.

(o) They were called *Thetes*. The troubles of Athens were always the work of such sort of people. See Xenophon, de *Rep. Græc.*

which drives from the helm of affairs the wisest citizens, or turns their superiority against themselves! Plutarch acknowledges, that the ban of the ostracism fell indiscriminately on all such as were distinguished for their reputation, their birth, or for their eloquence (p). Every body knows that all the greatest personages of Greece, were alternately involved in this proscription, and that their banishment made room for tyrants, or left a free career for the anarchy of factions. The ostracism, therefore, was directly contrary to its professed object, since it furnished citizens in credit, with the means of removing their competitors. Thus did Themistocles expel Aristides, whom the Athenians were tired of hearing called *the Just*. Thus, Pericles, one of the most corrupt of all ambitious men, overthrew Cimon and Thucydides, his two rivals in glory. Inconstancy, or necessity, produced tardy reparations; this light, jealous, superstitious, frivolous, presumptuous, rash and violent people, who suffered Miltiades to perish in a dungeon, who banished Aristides, and forced Themistocles to put himself to death; who idolized Cleon, and murdered Socrates and Phocion, were perpetually floating between injustice and repentance, between phrenzy and enthusiasm, whilst the tottering republic, now at the summit of glory, the next moment on the brink of ruin, possessed neither real power, nor genuine liberty (q).

Whether

(p) In Aristid. *Since, adds he, even Damon, the Preceptor of Pericles, was banished, because he appeared to surpass others in prudence and in wisdom.*

(q) The first great personage Athens produced, was Miltiades, who lived about ninety years after Solon. The last celebrated and praise-worthy statesman, to which this republic gave birth, was Phocion. In this interval of about one hundred and thirty years, during which this little republic acted so distinguished a part, what vicissitudes and revolutions!

Whether the laws be promulgated by the monarch, the nobles, or the people, if they be tyrannical, where is liberty? The ephori of Sparta, the decemvirs of Rome, the orators of Argos (r), the members of the Carthaginian democracy (s), those of the Athenian oligarchy (t), were no less tyrants than the most cruel tyrants of antiquity. Socrates had insulted with impunity a crowd of despots, in that very Athens which made him die in prison, and that *free city* could not support her liberty (u). I wish any one would point out to me in the ordinances of the most absolute monarchs, one more senseless, or more odious than the solemn decree of the Athenians (x), which prohibited every man, UNDER PAIN OF DEATH, from ever speaking, under any circumstance whatever, of appropriating to the expences of war, the funds destined for the public spectacles. I wish some one would explain to me what was the liberty of a republic, where a citizen was punished with death (y), for having made a proposition contrary to that strange law; where the impetuous Demosthenes himself, who possessed in the highest degree, courage of mind, that so rare and precious virtue, did not dare directly to make this proposition, when his country was in the most imminent danger:

(r) Polyb. l. XV.

(s) Polyb. fragm. l. VI. et Diod. l. XX.

(t) Xenophon *de rep. Græc.* l. II. and Thucydides, l. II.

(u) Senec. *de tranquill. anim.* 4.

(x) It was Eubulus who procured the passing of this celebrated decree; but Athens was no longer free, it will be said; in my opinion, it was never free. But the democracy, on the contrary, was at that period exclusively shared by an insolent and corrupt multitude. Thraſybulus had overturned the government of the tyrants, and Demosthenes vainly strove to drag his countrymen from their shameful indifference for every thing but their pleasures.

(y) Apollodorus.

ger: I wish, in short, to be shewn a constitution more fatal than that, wherein, to repel tyranny, they violated the eternal laws of justice. This is what was done by the ostracism: alas! what more was to be feared from any tyrant?

Let us examine the reasons Mr. de Montesquieu makes use of in defence of that part of the Athenian legislation (z), or rather of all republican legislations. He boasts the MILDNESS of the former; *and we should have been sensible of that, says he, if exile amongst us being always a pain, we had been able to separate the idea of ostracism from that of punishment.* But how is it possible for an involuntary exile not to be a punishment? What *mildness* do we find in ostracism? that of not murdering an innocent man, or at least a citizen not convicted of any crime? Is it not enough then to banish him from his country? for ostracism was a *banishment*, and not an *exile*; and at Rome, not a century passed without some noble being put to death from the accusations of the Tribunes, nor wherein public ingratitude, fomented by faction, did not perpetrate some flagrant acts of injustice. The Romans banished Camillus, restricted Scipio to a certain spot, exiled Cicero after the death of Catiline, and proceeded to such excesses as could not have been surpassed by Catiline if successful. Rutilius received in a corner of Asia the reward of his disinterestedness; Cato, who alone knew no other party than the republic, and did not fall under the ruins of his country; Cato saw himself refused the prætorian dignity, and could never attain the consulate (a). These were the fruits of authority entrusted in the hands of the people; and we are justified in exclaiming with Valerius
Max-

(z) Chap. XVII. l. XXVI.

(a) Senec. de Beneficiis, l. V. 17.

Maximus, on seeing so many examples of injustice and ingratitude towards the benefactors of the state: *Fortunate Athens! to have still found, after such unjust treatment, citizens who loved their country!*

Aristotle, continues the author of the *Spirit of Laws*, tells us, that all the world agrees that this practice has something popular in it. If, by the word *popular*, he meant *violent*, Aristotle is in the right, but if that philosopher understands by a *popular practice*, a mild and just practice, he is evidently in the wrong. After all, Aristotle was but a man, and we are all men. Why should he be an infallible oracle? We have the advantage over him of long experience, and I should have preferred a good reason, to a quotation from Aristotle, whatever respect I bear him. But once more, does it follow, that because the ostracism was not sanguinary at Athens, that it was either equitable or humane? Could a banishment of ten years, inflicted on a citizen by his countrymen, be other than an evil for him? or, could it be, as Plutarch calls it (b), *a mitigation and a relief from that envy which glutted all its hatred, and vented its rage by this species of vengeance, rather than a punishment*. The envy that calumniates, inspires only pity, or, perhaps, pride; but the envy that banishes and robs us of all our social rights, punishes undoubtedly; and the law of the twelve tables recognized that punishment as an iniquity, expressly prohibiting acts of proscription against individuals, unless preceded by a formal trial (c). Was not natural justice strangely violated, by excluding men from a society of which they were members from their birth, and that exclusion

(b) *In Themist.*

(c) See note 1st, of Chap. IX.

exclusion founded on no offence judicially alleged against them? And could that positive law, which so manifestly contradicted the law of nature, be a just one?

But at the time and places where this judgment was exercised, it was not deemed odious. Is it for us, who view objects from such a distance, to think differently from the judges, from the accused himself? It is a great disadvantage doubtless in clearing up historical facts, *to view them from a distance*; but it is necessary to be at that distance to form a sound judgment of their result. The criticism of history is certainly reserved to posterity, who have no prejudices, no passions respecting what does not affect them. If however authorities must be opposed to Aristotle, we shall find that Themistocles said to the Athenians: "O poor men! why are you weary of often receiving benefits from the same persons!" and it is very evident he was speaking of the ostracism. He did not then approve of it. We shall read in Plutarch (d), that in the revolutions of the democracy, it is usually the worst man who prospers, and raises himself to the highest rank; and that is what the ostracism produced, which was precisely a revolution of the democracy. We shall remark that Solon had established as a maxim, "that it is by the great that cities perish, and by the imprudence of the people that they fall into chains." We shall mark the words put by Plato into the mouth of Socrates, "Democracy is the empire of the wicked over the good; and the multitude possessed of authority is the most cruel of tyrants." Now by the ostracism the people exercised the most independent and most absolute authority;

(d) *In Nicias.*

authority; and Cicero judiciously remarks, "that the temerity and licentiousness of popular assemblies destroyed the Grecian republics (e)." The judicious Polybius foretold with an admirable sagacity the destiny of the Romans (f). "Her ruin," says he, "will be the effect of popular tumults, which will first introduce A DOMINATION OR TYRANNY OF THE PEOPLE." He looked upon the absolute power of the democratical party as the corruption of the republican government. As for the rest, where has Mr. de Montesquieu discovered that the persons accused commended this method of proscription? I would not believe it even on their testimony. Was not the resentment of Alcibiades then sufficiently fatal to his country? Every day, says Diodorus, in speaking of the troubles that rent Greece after the Peloponnesian war, every day some city banished a part of her citizens; and these outlaws wandered from country to country in search of enemies to their own. The fury of Coriolanus brought Rome to the brink of ruin. Listen to the affecting complaints extorted from Cicero by his exile: "I have felt," says he, "a great and incredible pain, I avow it; nor do I pretend to that philosophy which those would have desired in me, who find my soul broken and depressed by my misfortune. Could I then, on seeing myself torn from so many objects so dear to me, that I shall not here mention, for I cannot even at this day think of them without shedding tears; could

(e) Cicero is never exhausted on this head. *Quod enim fretum, says he, quem Euripum tot motus, tantas, et tam varias putatis agitationes fluctuum; quantas perturbationes, et quantos ætus habet comitiorum.* (Or. pro Muræna.) *Concio, says he again, quæ ex imperitissimis constat, &c.* (De Amicitia, sect. 25.)

(f) *Fragm. l. IX.*

“ could I renounce humanity, and divest myself
 “ of the most sacred affections of nature, then
 “ should I assuredly merit no commendation ;
 “ what right should I have to demand of the Re-
 “ public to give me credit for my conduct as a
 “ benefit, had I not for her, quitted such things
 “ as I could not deprive myself of without feeling
 “ my soul affected ? Such an insensibility, like a
 “ body which would not feel when it is burnt,
 “ would, in my opinion, rather deserve the name
 “ of stupor than of virtue. But to expose one’s
 “ self to the bitterest anguish, and to suffer alone,
 “ whilst the city is flourishing, the evils expe-
 “ rienced by the conquered inhabitants of a city
 “ taken by the enemy ; to be torn from the em-
 “ braces of one’s family, to see one’s house de-
 “ stroyed, and one’s estate plundered, to renounce
 “ one’s country, for the sake of that country, to
 “ be despoiled of the most distinguished bounties
 “ of one’s fellow citizens, and be precipitated
 “ from the highest pitch of fortune ; to see one’s
 “ voracious enemies, who insist on their reward,
 “ before the funeral of their victim ; to endure all
 “ these woes for the preservation of one’s coun-
 “ trymen, and that with the poignant sentiment
 “ of such great misfortunes, and not with that
 “ cold wisdom affected by those who love nothing ;
 “ but cherishing one’s self and one’s own, as
 “ much as nature inspires that feeling ; that is, to
 “ merit admirable and divine praises” (g). This
 is that fatal glory boasted of by Mr. de Montef-
 quieu ; *this judgment of the people*, says he, *covered*
with glory him against whom it passed. Yes, be-
 cause persecution was at all times one of the great-
 est merits of the persecuted, and the ostracism
 attacked only illustrious men, to whose celebrity it
 placed

(g) Cic. pro dom. 97, 98.

placed the seal; but it was too cruelly purchased. Alas! what idea do we form of glory, if we imagine that it can compensate for the loss of all the social, and the greatest part of our natural rights? The man who loved it so as to dry up his heart to that point, would be undoubtedly a very bad citizen. Reputation, says Bolingbroke (h), is a marvellous instrument in the hands of a wise man. His own good, and that of society, these are his objects: Poets, orators, nay, even some philosophers have reversed this order: they propose reputation as an end, and good, or at least great actions, as the means; they go farther: they teach our self love to anticipate the applauses we suppose are due to our name by posterity, and by frivolous notions of immortality: they turn more heads than their own. This false estimate, adds the celebrated Englishman, has been productive of much evil in the world. Reputation is an object men pursue by different roads, some of which are quite opposite to others. The vulgar doctrine invites us to consider the end as essential, and the means as indifferent: so that Fabricius and Crassus, Cato and Cæsar, were in pursuit of the same object. It will be urged, perhaps, that considering the depravity of human nature, it is impossible to maintain virtue in the world, without giving that direction to self love. Such is the opinion of Tacitus. *Contemptu famæ contemni virtutes* (i). But were this maxim true, whether we regard reputation as an useful instrument in all the occurrences of public or private life, or whether we
con-

(h) Extract from the Letters of Lord Bolingbroke to Doctor Swift.

(i) Pliny also has said: *Postquam desimus fatere laudanda, laudari quoque inepti putamus.* But I imagine he might have given better reasons for the corruption of the age he lived in.

consider it as the cause of that pleasure with which men are so much flattered, that it may contribute to the social welfare, it is necessary for it to be not absolutely contradictory to our personal well being, which is, which must, and always will be, the unperishable prime mover of mankind. This is precisely what was wanting to the glory resulting from the ostracism. It could suit the man who was in love with nothing but that fantastic being called RENOWN. Now if such a man exists, I do not know a more hateful nor more dangerous mortal. In a word, true glory in the eyes of a reasoning and sensible being, is no other than the public gratitude (k). The glory arising from the ostracism, therefore, must appear fatal to every good citizen. The triumph of moderation, was to subscribe to that odious decree without a murmur, and to desire, like the just Aristides, that no misfortune might ever befall his fellow citizens, to oblige them to recal the memory of their iniquity (l). That of philosophy, to say with the generous Metellus: "They are my enemies who have forbid themselves the enjoyment of virtue and of justice; as for me, I am not deprived of water and of fire, and I enjoy a very great glory (m)." That of patriotism, to answer like the

(k) This is in a few words the definition Cicero gives of glory. *Si quidem gloria est illustris et pervagata multorum et magnorum vel in suos, vel in Patriam, vel in omne genus hominum fama meritorum.* (Pro Marcel. 8.) He says in another place, that he who aspires to glory, ought to render himself so useful, and so dear to his fellow citizens, that they should regard his birth as a bounty of heaven. *Quare ita gubernare rempublicam ut natum esse te Cives tui gaudeant.* (Phil. I. 14.) This way of thinking is doubtless very far from that of rejoicing at their arrest of proscription.

(l) Plut. in Aristid.

(m) *Illi vero omni jure atque honestate interdicti. Ego neque aqua, neque igni careo, et summa gloria fruiscor.* (Metell. apud A. Gell.)

the austere Rutilius to the regrets of his friends, and their vows for vengeance: "What have I done to you, that you should wish me a return more fatal than has been for me the necessity of departing? I had rather see my country blushing at my exile, than in affliction at my return" (n). The triumph of heroism, in short, was to exclaim with Scipio, "I wish not to derogate from our laws and our constitutions; justice ought to be equal for every citizen. Enjoy without me, O my country! a benefit you owe to me: I have been the instrument of thy liberty, I shall become the proof of it. I go, if I am greater than is consistent with thy interest (o)." But Aristides, Metellus, Rutilius and Scipio, groaned under the injustice of their fellow citizens, and suffered cruelly, though much less, undoubtedly, than if their consciences had reproached them with deserving it. For that is a supportable exile, where every body is more ashamed than the exiled himself. But the conqueror of Hannibal, retired to Liternum, erected a tomb for himself in his place of exile, which he would not quit, that he might not owe his funeral honours to

(n) *Quid tibi, inquit, malefeci, ut mihi pejorem reditum quam exitum optares? Malo ut patria exsilio meo erubescat, quam reditu mereat.* (Senec. de Benef. VI. 27.)

(o) Seneca, Epist. 66. That philosopher adds these admirable words: "Liberty must either have committed an outrage on Scipio, or Scipio have outraged liberty. Both were crimes; he submitted therefore to the laws, and retired to Liternum, rendering his exile as disgraceful for Rome as that of Hannibal." Every body knows that the Roman senate, whose magnanimity is so often boasted, was the principal cause of the exile of Hannibal. See Tit. Liv. (l. XXXIII. c. 47, 48), and the excellent note at the passage of the translation of Seneca, by Mr. De la Grange, that I am quoting. (T. II. p. 140.)

to his ungrateful country (p); and it is thus the ostracism was approved of by him who fell its victim!

They ceased to make use of it the moment it was abused against a man of no merit. It is not an argument in favour of this tyrannical law, I apprehend, that it was only destined to oppress great men. In other countries vice was tolerated, says Lyttelton; at Athens they would not tolerate virtue. In short, according to the respectable philosopher whom I dare to contradict, with that freedom, and even with that kind of severity which is due to great men, because they seduce us the more easily, *That was an ADMIRABLE law, which prevented the bad effects which the glory of any citizen might produce, by heaping new glories on him.* I confess I do not understand what is meant by glory repressed by its own increase: but in reading the history of Athens, of Syracuse, of Rome, and of all the republics where the ostracism was exercised under different names, I have seen what confusion flowed from this odious proscription, on which tyranny was constantly erected.

As for the English, from whom Mr. de Montesquieu draws another example, their bill of attainder (q), which has perhaps been useful on a very few occasions, is not certainly the best of their laws; but it has at least the concurrence of the whole body of the legislature, which contains more information than can fall to the lot of a tumultuous

(p) *Vitam Literni egit, sine desiderio urbis. Morientem rure eo ipso loco sepeliri se jussisse ferunt, monumentumque ibi ædificari, ne funus sibi in ingrata patria fieret.* (Tit. Liv. l. LVIII. c. LIII.)

(q) The bill of *Attainder* is a judgment which having been approved by the two houses of parliament, and signed by the king, passes into an act, by which the person accused or suspected is declared guilty of high treason, and banished without any other formality, and without appeal.

multuous democracy. It is however invariably of the essence of law, that it should indiscriminately *prescribe for or against all the citizens* (r). That beautiful thought of Cicero, quoted by Mr. de Montesquieu himself before he delivers his own opinion, sufficiently establishes the necessity of abolishing such laws as are aimed only at an individual. They too are liable to the suspicion of prejudice, of party, and of partiality; they are too commodious for private hatreds, and for arbitrary wills. "Every citizen, says the Marquis de Beccaria (s), ought to know in what circumstance he is culpable, and when innocent. If censors, and in general, arbitrary magistracies, are necessary in some governments, it can only be in weak and ill organized constitutions. Obscure tyranny has made more victims amongst citizens uncertain of their fate, than those tyrants have immolated, who have made no secret that they are so, and whose cruelties revolted every mind without debasing them." Observe, however, that the censors never determined on the fate of a citizen but in presence of all the people; that Scipio Africanus, that great man, *whose decisions Rome and all the world, according to the expression of Cicero, were accustomed to respect*, having attained that dignity, did not dare to erase from the list of knights a certain Licinius, though he had declared that he was certain of his criminality, because no person presented himself to prove it (t).
Scipio,

(r) *Scitum est jussu in omnes.* (Cic. de leg.)

(s) *De' Delitti. Della tranquillita publica.*

(t) *Non enim mihi exemplum summi et clarissimi viri P. Africani prætereundum videtur, qui, cum esset censor, et in equitum censu Licinius sacerdos prodisset, clara voce, ut omnes concio audire posset, dixit se scire illum verbis conceptis jejurasse: si quis contra dicere vellet, usurum eum esse suo testimonio. Deinde cum contra nemo diceret, jussit equum traducere.* (Cic. pro Cluent. 44.)

Scipio, adds the Roman orator, would not trust to himself on an occasion which might terminate in the dishonour of a citizen (u): Remark, in short, that the censors could not exclude any one from the senate, without assigning his reasons in writing (x). And that notwithstanding these precautions, they still perceived at Rome, the inconveniencies attending this power, even so restricted. "Let us decide before every thing," said Cicero, "whether a thing should pass for true, because the censors have inscribed it, or whether they have the right to inscribe it, if it be not true. If their inscription be sufficient to establish its truth, beware, lest this privilege insure to them a despotic power over each of us; beware, lest the tablet of the censors prove as pernicious to the republic as the most cruel proscriptions; beware, lest we should have as much to fear from the censorial pencil, whose point our ancestors have so long laboured to blunt, as from the sword of a dictator (y)." We may imagine from this fragment, how this great man would have qualified the monstrous prerogative of Lettres de Cachet, and in general every arbitrary and mysterious suspension of liberty; but if my principles

(u) *Itaque is cujus arbitrio et populus Romanus, et cæteros gentes contenta esse consueverant, ipse sua conscientia, ad ignominiam alterius contentus non fuit.* (Cic. pro Cluent.)

(x) *Patrum memoria institutum fertur ut censores motis à senatum ascriberent notas.* (Tit. Liv. l. XXXIX.)

(y) *Primum illud statuamus utrum, quia censores subscripserint, ita sint; an quia ita fuerit, illi subscripserint. Videte quid agatis ne in unum quemque nostrum censoribus in posterum potestatem regiam permittatis; ne subscriptio censoria, non minus calamitatis civibus quam illa acerbissima proscriptio possit afferre: ne censorium stilum, cujus mucronem multis remediis majores nostri retuderunt; æque post hac atque illum dictatorium gladium pertimescamus.* (Cic. pro Cluent. 44.)

tiptles are to be judged by more modern facts, without travelling out of the English constitution, which the author of the Spirit of Laws regards as the *chef-d'œuvre* of the human mind, an opinion in which I am very far from joining him (z): what is now passing in the British isles (a), ought sufficiently to teach us that the suspension of the famous law of *habeas corpus* (b), that true palladium

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(z) The state, says Lord Bolingbroke, in speaking of his country, (Let. 2. Politics of Europe) the state is become, under an ancient and known form, a new and undefineable monster, composed of a king without monarchical eclat, of a senate of nobles without aristocratical independence, and of an assembly of commons without democratical liberty.—This sentence, worthy in every sense of Tacitus, whatever Voltaire may say of it, will be developed in the notes at the end of this work.

(a) This is written at the beginning of 1778, and I have been shut up since the beginning of 1777, with very few books, without public papers, without any correspondence whatever, without society of any kind. I am unacquainted therefore with facts posterior to that period, and I should be obliged to trust entirely to my memory; but a small part of my papers having been restored to me, I found notes and extracts on the subject I am treating, collected amongst the materials for a large work, of which this will form, so to speak only a chapter.

(b) Every body knows that this is a law by which no citizen who gives bail for his behaviour can be imprisoned, unless arrested on a charge of a crime declared capital by the law. A judge cannot refuse the meanest prisoner an order of *habeas corpus*, which obliges the gaoler to produce the body of the prisoner in the court specified by the order, and to certify the cause of imprisonment. Every prisoner must be accused on the first term of his imprisonment, and tried in the following term. If he be enlarged by the court of justice, he cannot be again put in prison for the same offence. Such is this celebrated law, the only known safeguard of civil liberty, since it renders all evasion, and all delay impracticable on the part of ministers and judges. As the article *habeas corpus* in the *Encyclopedie* does not appear to me perfectly exact nor complete, the reader will find more particulars respecting this important law in the notes at the end of this work, where I shall give an extract from Blackstone on the subject.

of English liberty, is the most dangerous of concessions, and the greatest triumph of the royalists, who are certainly rendering as little service to their master as to their country.

As for me, it is in vain I search for pleas to justify the prerogative by which the most innocent man in the world may see himself in an instant stripped of his liberty without a judicial decree; for I confess, that I find more that are in conformity to the general maxims of the public code. It is in vain I ask myself what can be the crime of a citizen, who, unable to receive his condemnation from the laws, is made a prisoner, and detained by the particular order of the sovereign, who from that moment ceases to be the executor of the laws, and becomes an oppressing master, or, to speak plainly, a TYRANT, who, by an odious abuse of his power, puts them to silence, when it suits his caprices or his passions; I can make no reply; for can that obscure *interest of the state* which it is impossible to define, and which is in opposition to that of the subjects, be deemed an answer? *The interest of the state* is to be ruled with equity. *The interest of the prince* is that of the state. When the laws are in vigour, when no individual is deprived of his natural judges, we may esteem ourselves free, because we are subjected only to a fixed and determined power; because the judge then has not the force of an oppressor.

I am aware that there are still many things to be wished for. I know, and I have formerly declared

ject. It was with the same view, and on principles similar to those of the English legislature, that the magistrates of Athens were obliged to take an oath in public, never to detain a citizen prisoner, when he could find three bail of his own quality and rank, except in cases of diminishing the coin, or treason, that is to say, in crimes which interested the public.

clared it, that for the law to be just, legitimate, obligatory, in short truly LAW, it must have the sanction of a free and general consent ; I add, that in every state where the citizens do not participate in the power of the legislature by the delegation of a body of representatives FREELY CHOSEN BY THE MAJORITY OF THE NATION, wisely restrained by their instructions, *particularly on the nature of taxes and the collection of them*, AND SUBJECT TO THEIR CONTRAOL, there is not, nor can there be, public liberty. I know in short, that in unlimited monarchies, where the prince, uniting without modification, and without participation, the legislative and executive powers, leaves to his subjects the exercise of their individual liberty, by entrusting the judicial power to courts of justice ; this power may be apparently out of his hands, without being so in fact at least to the degree necessary for the security of individuals (c). *Woe be to that people amongst whom*

N 2

the

(c) *We acknowledge in France*, says the president Henault, (and it has always been acknowledged) *no other sovereign than the king. QUI VEUT LE ROI, SI VEUT LA LOI. WHAT THE KING WILLS THAT WILLS THE LAW.* The reader will do me the justice to believe, that it is not in so vague and equivocal a sense, that I claim the laws of our constitution. I have said, in another work what I think of the president Henault, frequently a cowardly and treacherous prevaricator, and at all times a courtly and versatile writer. This maxim, which he makes a rule of our public right, is drawn from the institutes of Loysel, who quotes no authority, and from whence have been deduced abominable consequences. It is pretty nearly the doctrine of the odious law *regia*, if one may call the ravings of despotism and adulation a law, and it is precisely that of Ulpian, who says: *quod principi placuit, legis habet vigorem.* (L. I. tit. 2. sect. 6. de Const. Princ.) See to what a purpose the Roman law is too often put : Maxims of this kind have been searched for and met with, which are imprudently quoted and erected into law. (See on this subject the notes at the end of this work.) They might find also in the history of Greece, the decree by which the people of Athens com-
manded,

the lawyer shall become the friend, or the slave of the prince ! The laws will soon be perverted, which is a greater evil than if they were annulled ; the innocent will be devoured under the shadow of forms : tyranny will have a code : judgments will degenerate into simple formalities : despotism, which respects the public opinion only the better to evade it, to impose upon it, to disfigure it, and to withdraw from its empire, despotism, which disunites and corrupts all bodies of men, in order to dispirit them the more easily, under the mask and

manded, and ordained that every thing the king Demetrius commanded, on whom they had bestowed the title of *Saviour God*, SHOULD BE DEEMED HOLY TOWARDS THE GODS, AND JUST TOWARDS MEN. This is exactly the doctrine of Ulpian reduced to practice.—The only honest explanation that can be given of this principle of Loyfel, *qui veut le roi, si veut la loi*, is, that every will contrary to the law, is contrary to the will of the king. These are the proper terms of Bracton : on the laws of Edward the Confessor, l. I. c. VIII.) *non est rex ubi dominatur voluntas et non lex* ; and in another place : *Potestas regis est potestas legis*. It has been maintained that *qui* (*qui veut le roi, &c.*) as being the first word of the sentence, and the nominative, means *celui qui*, *that which*, which is evident ; that *si* (*si veut la loi*) is only a simple enclitic, and they prove it by several examples. Thus, according to their explication, *qui veut le roi, si veut la loi*, signifies : *celui qui veut le roi*, *celui-là-même veut la loi*, *that which* the king wills, *even that very thing* wills the law. However this may be, we must allow that a lawyer is very culpable to express himself in so equivocal a manner, and that it is descending very low to defend the doctrine of despotism by such authorities, and by giving them a sense not less absurd than criminal. But it must be allowed, as I have said elsewhere, that it would be the height of insanity to make the imprescriptible, the unalienable, and sacred rights of man depend on grammatical disputes. The reader may see the explication of the maxim, *qui veut le roi, si veut la loi*, and the answer to all the odious consequences wished to be deduced from it in the *Maximes du droit public François* of Mr. de Montblin (tome II. part I. c. VI.) and in a publication entitled *L'avocat National*, which contains many learned researches.

and name of legal authority, will become a juridical system of oppression.

But I did not announce a treatise on political and civil liberty. I claim only the free and inviolable exercise of the laws established in our constitution. Let us not anticipate a state of servitude such as I have been painting ; let us confidently desire to be under the judicial cognizance only of our magistrates ; let us be careful not to consecrate, in some measure by foolish and criminal demands, or by a still more vile complaisance, those arbitrary orders which disturb their functions, and encroach upon their rights, which are our own. What a state of abjection, to be a slave even in one's thoughts ! It is the servitude of cloisters : it is the last degree of the debasement of human nature ! How governments and circumstances change the manners, the principles, the opinions, the passions of human beings ! They were men like us, who would not suffer a person disagreeable to the parties, or about whom they were not agreed, to sit in judgment on the life, or the reputation of a citizen, nor even to decide on the smallest pecuniary matter (d). They were men like us, who ordained that the life of a citizen could not be decided on, but in a general assembly of the people, (e) and amongst whom the death of a criminal was even

(d) Law of the twelve tables, Tit. Liv. l. VI.

(e) *Neminem voluerunt majores nostri, non modo de existimatione ejus quam sed ne pecuniaria quidem de re minima esse judicem, nisi inter adversarios convenisset.* (Cic. pro Cluent.) These *selecti judices*, named by the prætor with the mutual consent of the parties, resembled, according to the remark of Blackstone, (Comment. on the laws of England,) the juries of England. Their names were drawn by chance, until the number was complete. The parties might make their challenge : they drew afresh : and they were made to take an oath like the English jurymen. (Consult note II. at the end of this work, where I have placed the details on the judgment

even a subject of mourning (f) And we, we think that a sovereign, that his ministers may be judges, or even punish without judging!

But it will be said, that there are many circumstances where the delays of legal formalities may put authority in danger, and consequently the society, which is maintained and protected by it, if these troubles were not rapidly repressed. Every state is exposed to transient seditions, which must be stifled with all the activity of an absolute and even arbitrary government, and this is so unanimously admitted, that it is scarcely possible to give an instance from ancient or modern history, of a single government, without some mixture of arbitrary authority.

Were it even true that human societies are capable of being directed solely by the maxims of justice, or that the law alone is not an adequate restraint; were it even necessary for a certain portion of arbitrary authority, to be vested in the magistrate, the monarch should never be the person with whom that authority ought to be entrusted; for he is already possessed of so much power and influence, that this increase of power cannot fail of becoming in his hands the irresistible instrument of the total subversion of liberty; and if I were absolutely compelled to choose between two opposite extremes I should say without hesitation, with Swift (g),
that

judgment by juries.) We see by this particular, and those of note (b) page 299, that the ancients had invented at least, if not brought to perfection, that beautiful and simple method of judgment by juries, and the law of *habeas corpus*. The solemn formula in ordering the execution of the sentence, was, *Lege age licitor*, Licitor, execute the law.

(f) *Et si perversa induenda magistratui vestis, &c.* (Senec. de Ira, l. I. c. XVI.) See in the translation of Mr. La Grange (tome IV. page 137, note 2.) the learned note explaining this passage.

(g) Various thoughts.

that a king should only be a scare-crow, placed in the middle of the fields to protect the harvest. At all events, it appears to me certain, that it would be less dangerous, in cases extremely rare, that the judges should have recourse to the supreme power for the public safety ; and this extraordinary method, though not exempt from inconveniencies, might be considered at least as the rapid, but deliberate, and only provisional judgment of a legal court, rather than as an arbitrary practice of absolute power, which is always terrible and always fatal. But reason and experience, which agree with it, prove, as we are about to demonstrate, that if the rigid and continual observance of the laws may induce by their delay some inconveniencies of police, the innumerable advantages resulting from such a principle of government, the sole pledge of political and civil liberty, beyond comparison outweigh them ; and these pretended inconveniencies, besides their being greatly exaggerated, are not the proper effect of the observation of legal forms. This truth will develop itself still more clearly, when we shall treat of *Lettres de Cachet* considered relatively to individuals. Let us first examine if arbitrary imprisonments are necessary, as it is so often asserted, and so generally believed, for the police of great cities.

C H A P. X.

Police of great cities. The examples of Holland and of England. Definition of the word Necessity in its political acceptation.

THE celebrated Hume, in giving an account of the act of *Habeas Corpus*, says, "that it is rather difficult to reconcile with such extreme liberty the regular police of a state, and especially that of great cities." This ambiguous manner of speaking, to which that celebrated writer is a little too subject, on all matters respecting government, leaves us almost in doubt whether he does or does not give an unqualified approbation of this famous law. That great philosopher strangely forgets himself, if it be true that he really had any doubts on this occasion. It is proper to remark, that he asserts two lines before this, *that this law is essentially necessary for the protection of liberty in a mixed monarchy, and, that as this is not to be found in any other form of government, it is a sufficient reason to make the English prefer their civil constitution to all others* (a).

If

(a) "This law is essentially requisite for the protection of liberty in a mixed monarchy; and as it has not place in any other form of government, this consideration alone may induce us to prefer our present constitution to all others. It must however be confessed, that there is some difficulty to reconcile with such extreme liberty the regular police of a state, especially that of great cities." (Hist. of Great Britain under the house of Stuart, edit. in 4to, vol. II. chap. v. p. 304.) The Abbé Prévôt has mutilated not only this, but many other passages, in his translation, particularly the whole of the reign of Charles I. and above all, the end of it.

If the law, which renders all arbitrary imprisonments unnecessary, BE ESSENTIALLY NECESSARY FOR THE PROTECTION OF LIBERTY, it is for ever sacred and irrefragable; for to what good purpose is all government, if not to protect liberty? And what is there which can authorise it to commit an evil that it ought to prevent? The pretended inconveniencies which that so much calumniated liberty may produce respecting the police, apparently will, and can only be the effect of the want of skill of the administrators, of their want of vigilance, of firmness, or of integrity. At all events, if the sole object of government be not to secure our liberty and property, what signifies to us its excellent police, what signifies to us the advantage of society, which serves as a pretext for all partial acts of injustice, if we must forfeit those advantages, and those rights, for whose preservation and increase we united ourselves with our fellow creatures? Whether we are to be stripped by a robber or by a farmer-general, to be fettered by an enemy or by a minister, we shall not be the more free; and in the latter case the injury is the more serious, the misfortune the more complete, in as much as our confidence is betrayed, in as much as we pay our oppressor, and it is from us that he holds his power, and every act of natural defence is then prohibited as a crime. “ In war
“ one is despoiled by one more valiant than one’s
“ self, said the Britons, oppressed by the lieutenants and the intendants of the emperors; but
“ here they are a set of cowards, men without
“ hearts, who drive us from our own houses,
“ who carry off our children, who torment us by
“ levies of militia, as if we could suffer every
“ thing but dying for our country: the discord
“ or the harmony of these officers are equally fatal
“ tal

“ tal to us : we can with-hold nothing from their “ unbridled passions (b).” These unfortunate men, who gained nothing by such patience, unless the emboldening their tyrants to treat them worse, and as men capable of bearing every thing, were in the right to prefer the miseries of war, mixed with the hope of liberty and vengeance, to those of a peace which left them neither compensations nor resources. In a word, it never can be a duty for men to submit to orders which trench on their natural rights, with whatever pretext they may be coloured ; and perhaps it would not be difficult to prove, that it is a very sacred duty to resist them.

I might besides inquire wherein consists the utility of these great cities, so difficult to regulate, those centres of corruption and of servitude, those sinks of all the vices, those theatres of every crime, and the graves of the human species, where, perpetually degenerating, it seeks irrecoverable destruction. It would be found that these immense capitals have been the very active causes of the destruction of every state, in whose bosom they have been formed, and above all, that these fatal heaps of men, who reciprocally infect each other with their breath, are always produced by the foolish and wrong headed manœuvres of government, which strives to attract every thing to its centre, knowing it to be a sure method of becoming

(b) *Nihil profici patientia, nisi ut graviora tanquam ex facili tolerantibus imperentur. Singulos sibi olim reges fuisse : nunc binos imponi ; & quibus legatus in sanguinem, procurator in bona sæviret. Æque discordiam præpositorum æque concordiam subjectis exitiosam : alterius manus, centuriones alterius vim et contumelias miscere ; nihil jam cupiditati, nihil libidini exceptum : in prælio fortiorum esse qui spoliaret, nunc ab ignavis plerumque et imbellibus eripi domos, abstrahi liberos injuncti delectus, tanquam mori pro patria nescientibus.* (Tacit. Agric. 15.)

coming absolute, and which finishes, by being itself so completely duped, as really to consider these obstructions of the body politic as the principal source of its life and power. But, laying aside all these general observations, these complex reasonings, which together with their proofs would form matter for a separate work, and which would infallibly be answered by fine academical phrases, and affecting exclamations, the value of which I shall analyze on another occasion; I think it is easy to decide from facts, if it be necessary, that police, properly so called, should overstep legal forms, or should always be subordinate to them.

Here opens a vast career; in looking over history, I might ask, how they lived at Athens, where even the greatest criminals enjoyed a full and perfect liberty during the whole time of the preparation for their trial, a preparation which was not secret, *as amongst us*, in contempt of justice, humanity, and good sense; but public as the accusation, which cost the accuser a fine of one thousand drachmas, if a fifth part of the suffrages were not in his favour. How did they do at Rome, I should further say, where, each man holding in his hand, so to speak, the rights of his country, and having it in his power to accuse whom he thought proper, at the risk of being branded with infamy if he advanced an imposition (c)? No person accused

(c) The letter K was branded on his forehead. Our laws permit the accused, on his acquittal, to demand from the attorney-general the name of his accuser. (See l'ordonnance de Charles IX. états d'Orleans, art. 73.) But this permission is very tardy, and it seems as if in our criminal code there was a constant tendency to prevent the accused from being too able to defend himself. The seventh article of the third title of the criminal ordinance declares, That unjust accusers and informers shall be condemned in costs, damages, and the interests of the accused, and

cused forfeited his freedom before he was convicted and condemned, which never happened until he had four defenders allotted him; whilst, by a strange, absurd, odious, and frightful inconsistency, our laws admit of counsel, only in cases of speculation, extortion, and fraudulent bankruptcy (d). These crimes are more privileged in our philosophic age, in our *happy kingdom*, than innocence, oppressed and exposed to the greatest perils. This discussion would furnish me, no doubt, with more than one proof in favour of my principles; but as the police of the ancient republics became really very bad, when their manners,

and to greater penalties, if he fails in his proof. Shall we always then appreciate every thing by money? Do they imagine that every thing may be compensated by money? And how many unfortunate persons are acquitted and discharged, after long torments and cruel outrages, without the smallest reparation!

(d) Art. 8. tit. 14. of the ord. of 1670. Some of the editors of that ordinance strenuously opposed the establishment of this strange jurisprudence. "It is true, says the first president de Lamoignon, that some criminals have escaped from the hands of their judges, and have got clear from punishment, by means of their counsel. But if counsel has saved some guilty, may it not happen that some innocent persons may perish for want of counsel? . . . Now it is certain that amongst all the evils which can happen in the administration of justice, none is to be compared with that of making an innocent man perish: it were better to acquit ten guilty, &c. &c." (See the *Verbal Process* of the ordin. of 1670.) We find in the code published in Sardinia in 1770, (tit. XII. of the defence of the accused), forms infinitely more favourable to humanity. It is there declared, that every person accused may choose his defenders; that he shall be furnished with a copy of his process; that he shall be allowed eight days to impeach the credibility of the witnesses, and another delay of fifteen days to furnish proofs of these impeachments. See also excellent principles on this subject in the *instructions of Catherine II. to the commissioners employed to prepare the plan of a new code of laws*. But above all, consult Blackstone, (*Commentaries on the laws of England*,) on the criminal code of England. (See on this subject note II. at the end of this work.)

ners, which were totally foreign from ours, were changed ; as it is easy, by means of sophisms, to divert effects from their true causes ; as the judicial power, that only source of civil liberty or servitude, was in them, in spite of the laws, and thanks to the vices of the constitution, frequently an instrument of slavery (e) ; as historical facts, besides, are after so many centuries liable to be contradicted, I shall make use of modern examples ; I shall cite indisputable facts which are before our eyes.

When we see the French enraptured with their *thirty inspectors* of the different quarters of Paris, with their *hundreds of exempts*, with their THOU-
SANDS

(e) At Rome, for example, this was almost always true. *Mr. Delolme*, in his profound work, called *the Constitution of England*, says with reason : (chap. IX. book II.) "The consuls exercised there
" at all times the right of life and death. The dictators had it ; the
" prætors had it ; the tribunes of the people had it ; the commissioners
" named by the senate had it ; the senate therefore, *à fortiori*, had
" it ; and the three hundred and seventy deserters they ordered to
" be precipitated at one time from the top of the Tarpeian rock,
" according to Livy, furnish an ample proof of what they could do.
" We may even say, that at Rome the right of life and death, or
" rather, the right of killing, was attached to all power whatsoever,
" even to that which principally arises from favour or from
" riches ; and the only consequence of the murder of the Gracchi,
" which was followed by that of three hundred, and afterwards
" by that of four thousand unarmed citizens, who were murdered
" by the nobles, was an order of the senate to build a temple to
" Concord. The law *Porcia de tergo civium*, which has been so
" celebrated, produced no other effect but to complete the security
" of the consuls, prætors, and questors, &c. against that of
" the *Talio*, and who, like Verres, ordered the lower citizens to
" be beaten with rods, and crucified, after their caprices. In
" short," adds Mr. Delolme, " what proves with how little know-
" ledge even of history, the ancient government of Rome has been
" so extravagantly extolled, is, that the senate had there at all
" times the power of imposing taxes, that of dispensing with the
" effects of the laws, nay, even of abrogating them." I doubt
" whether a profound inquiry into the histories of Sparta, of Athens,
" &c. would afford more proofs of real liberty.

SANDS OF SPIES with their *multitude of sbirres*, their *legion of commis*, and *sub-commis*; with the innumerable retinue, in short, of that police, so *complicated*, so *despotic*, so *expensive*, which is *the boast of knaves*, and *the admiration of fools*, which, instituted only to keep the streets clean and well-lighted, to insure its tranquility, and look after thieves, is become a *very effectual inquisition*, by which all the citizens are enslaved, under the pretext of their safety; which tolerates, and even provokes, the most dissolute excesses to *employ* the youth (f); which costs incredible sums of money to the state, to aid the intrigues, or to amuse the curiosity, of some men in power (g); on beholding, I say, our admira-

(f) I should make every virtuous reader shudder, if the pen of a man who respects himself could trace out the details of the horrible depravity. At Paris, every crime is tolerated on paying. From *La Regence*, down to *Dindons*, every thing is encouraged. (Libertines will understand me.) All the places of bad resort in Paris pay; there are very few streets without them; in some they may be reckoned by dozens. All the women of the town are carefully laid hold of who have neglected to inscribe their names.

The author is supposed to insinuate, that *every vice* is tolerated, from the incestuous commerce with his own daughter, of which the famous *regent* was accused, through every possible gradation of human depravity and *refinement*, down to the most monstrous perversion alluded to, said to have been practised by the wretches who for some time governed the Roman world, and handed down, to complete the black catalogue of modern horror. (*Translator.*)

(g) It is well known that the article mentioned in the preceding note alone produces an enormous revenue, but not to *the state*, as we may well imagine; the police is a gulph of receipt and expenditure. It is unknown the sums of money *the grey robe* costs: *the short robe* is known; but the grey is composed of creatures of the police, who insinuate themselves every where, and make reports: these reports are inscribed in books, and when a lieutenant wishes to destroy you, he says: *Mr. Such-a-one is a bad fellow; we have notes respecting him of such a year.* The inquisition of Spain or Portugal, the Italian filetto, the bow-string of the seraglio, are not so treacherous as the police of Paris.

admiration for these sublime manœuvres, one would be tempted to believe that there was no living in peace any where but in Paris, that men cut each others throats every where else, or that, by a deplorable fatality, this immense city is inhabited by a people of villains. But by no means. In every country in the world, we may say with Fenelon, *that almost all the honest people are of the lower class* ; and the inhabitants of our capital, so far from being worse than others, are the most gentle, the most frivolous, and the best modelled to slavery, and consequently the most easily to be restrained. On the other hand, one lives, in truth, very well in other countries, and one sleeps there very quietly without so many refined precautions.

AMSTERDAM contains upwards of two hundred thousand souls. I advance it as a fact, that of the large towns of Europe, it is that in which the fewest murders and irregularities are committed ; I have lived there ten months, during which time they only reckoned one murder, and very few considerable robberies. The police of every kind is very regularly and sufficiently, if not even too rigorously, administered. We may ask some of our flashy seigneurs, whether these boorish Hollanders are pleased that one should *make a disturbance* at their houses, whether duelling is permitted there unpunished, and whether every man be not there a man, independently of his dress, his riches, and his rank. Well then ! twenty-four guards maintain good order in Amsterdam, and all the police devolves on them. Two or three hundred *wachts*, or *criers of the night*, are in motion from ten in the evening until day-light, to watch after fire. They form a continued chain from one end of the town to the other, and stop, in an instant, every disturber of the public peace by a very simple manœuvre, but perfectly

perfectly combined, and so infallible, that it is morally impossible for the person pursued to make his escape : they put him in the guard-house until day, when he is carried before a magistrate. These are the limits of their functions. These guards are taken from the people, and alternately do duty for a trifling pay (h). But the twelve *schouters*, and their twelve *dienders*, or deputies, are alone invested with the police of the day, and they are sufficient, because every body would support, would defend, would assist them in case of need, from the certainty that they are only acting by virtue of the law, and for the common good.

Some persons have answered, when I gave them so striking an example of the simplicity to which the most excellent police may be reduced, that the city of Amsterdam, intersected by canals, and surrounded by water, possessed, from its situation and its structure, many advantages for securing at a small expence, and with very few men, the public tranquillity, since all the passages might be shut up in an instant.

This assertion is nothing less than accurate : every thing is shut at night at Amsterdam ; but it is easy to conceive, that in so large a city, and whose territory hardly extends beyond its gates, it is impossible to cut off in an instant every means of flight in the day time : the passages can neither be stopped soon enough, nor intercepted so long as to admit of it. In the second place, if the local situation gives some advantages in arresting criminals, it offers still more in destroying the traces of a crime.

Every

(h) I do not enter into more particulars on this head, because I am acquainted with a man of merit, long employed by the court of France at Amsterdam, who is employed in a work on the police of Holland, and I expect it will appear before this possibly can.

Every body knows, that at Marseilles, at Bourdeaux, and every place where there are currents, or great bodies of water, the rivers and the harbours are too often made use of for that purpose. Now every thing is port and river at Amsterdam. Many circumstances besides ought to render the police more difficult in that town, than even at Paris, which is three times as populous.

Amsterdam is composed of the sweepings of all nations. One finds as many adventurers, and more sailors, there than any where. Now the latter are the most undisciplined and the most brutal of all men; the former the greatest rogues, the most intriguing, and most dangerous of all men. The leaven of the ancient dissensions between the aristocratic and democratic parties still ferments in this great city. Upwards of thirty different religions are professed there: the numerous proselytes of these sects, the one emulous of the other, follow each other, and preach almost in the same places the tenets and the rites of their respective creeds. What sparks to produce the most terrible conflagrations! This city notwithstanding is habitually, and, exclusive of a few popular emotions, produced once or twice in a century by the prevarications of the corporate body, or the intrigues of faction, this city, I say, is the most peaceable of all great towns; and this without lettres de cachet, without inspectors, or exempts of the police, or commissaries of quarters, or all that vile race of informers that infest our capital, and make us tremble at our fire-sides, or arbitrary and indefinite imprisonments, or extrajudicial punishments, or, in short, *every thing that kings dare do*. No citizen can be arrested in his house, even for the most atrocious crime, unless the whole body of the magistracy repair thither,

and solemnly attest the truth of his delinquency, and that the accused shall be legally acquitted or condemned. By what magic can such marvellous effects be produced? By the succour only of the laws: by their constant, rigorous, and inflexible execution. Every citizen in that happy country knows that he is a man, as well as the first amongst the magistrates: he does not reckon upon impunity: he does not fear oppression. Nothing excites him therefore to wickedness, and every thing invites him to be peaceable. There is no prevailing sect; no sectary dares to make himself remarked, because the civil power treats all with the same impartiality, and, so far from fomenting hatreds, and authorizing persecutions, the magistrate opposes them with all his power; because he restrains *profelytism*, and punishes every action that disturbs society, of whatever religion the delinquent may be; because he keeps the preachers in very narrow limits; because, in short, by confining the ministers of the established religion to the service of their churches, he has taken great care to render their places more arduous than lucrative, and to prohibit them from speaking in public on every thing which respects the order of government. The domination of the temporal, over the spiritual power, preserves to the Dutch, with an indefatigable vigilance, the precious inheritance of that toleration which their fathers purchased with their blood. Their priests are not persecutors, because they have neither any interest in, nor above all the power of being so. They do not strive to govern the earth, because they have no pretensions in that respect. Thus has Holland discovered the only means of establishing and maintaining universal liberty of conscience, by destroying every interested motive which can
give

give food to zeal, and render it ardent, tenacious, and fatal. Unbounded toleration has cooled the impetuosity of fanatics, by rendering it impotent: it has checked the devotees, confounded the underhand practices of preachers, stifled proselytism, and given the civil power a stable authority over the sacerdotal body, and over all the sects. It has maintained social tranquillity at the expence of enthusiasm, of hypocrisy, of superstition, and cupidity: it has above all saved the nation from the tremendous danger of beholding two authorities leagued together in support of practical, by speculative despotism; and the death of the virtuous Barneveldt will at least have saved for a century and a half, his ungrateful country. Never does the terror of sects, which extends even to fanaticism (i) amongst the people, produce any explosion. Whoever should excite any trouble on account of religion, would be punished with the most inflexible severity: every body knows this, and conducts himself peaceably, according to that belief for which he is responsible to God alone. Amongst a certain class of citizens, perhaps some are more indifferent about their religion, but they all love much more their fellow creatures. Every man adores God in his own fashion, without debating about the best mode of praying. Toleration invites toleration, as persecution renders man a persecutor. Experience, which is the *complement* of all the proofs when it confirms the theory, has brought this matter to the certainty of evidence.

O 2

By

(i) It is a very remarkable fact, that in Holland the government is tolerant, and individuals intolerant; and that in Switzerland, on the contrary, where the individuals are very tolerant, the governments are still very intolerant. This observation, with many others, proves, that Holland is the only country where they have known how to combine and reconcile politics with religion.

By means so gentle, so just, so simple, so politic, so wise, Holland, tranquil and fortunate, has profited by the faults of her neighbours, and has enriched herself by their losses. To this moderate conduct, substitute strokes of authority; issue a bull; circulate Lettres de Cachet, you will have enthusiasm, fanaticism and convulsions, in the room of prosperity and concord.

The example of Amsterdam, that school and theatre of civil and religious toleration, that city where are combined so much activity, and a tranquillity so profound, so simple, and so perfect an order with so much liberty, is a strong inducement for us to study the principles of that police, which *we* imagine we have carried to so high a degree of perfection. We may there learn at least that there are methods as sure, less expensive, and more lenient than ours, of maintaining the peace of society. It is not with an infinite number of men, with heaps of gold, and with continual outrages on the liberty of the citizen, that it is either beautiful or meritorious to produce public tranquillity. It is by respecting the rights of all, it is by obeying the laws, by employing few men and little money; it is, in a word, by producing great effects with scanty means. In other respects, when I boast of Dutch liberty, I do not mean to speak of that which is founded on their constitution, which I look upon as nearly demolished; but of that which is enjoyed by individuals in the ordinary intercourse of society. Political liberty is taking its flight from Holland, as from almost every other state in Europe; (alas! what republic of merchants ever long preserved it?) but they who do not reflect, are not yet aware of it, because civil liberty is nearly inviolate, or very rarely attacked. The people of Amsterdam think they possess political

tical liberty, because they feel their strength, because they are courted, because they rise, cry out, and break two or three windows in a century. The magistrates understand by the word *liberty*, the remains of an expiring oligarchy, of which they have nothing left but the pride, the stateliness, and perhaps the corruption: the insatiable cupidity, in short of the Dutch nation, has robbed it of what the English call so well, *public spirit*, and she has lost at the same time that good faith which rendered her so commendable, and that spirit of order and œconomy which was one of the principal instruments of her prosperity, whilst the enormous weight of her debt, contracted by a foolish ambition, the exorbitant, and in some measure arbitrary excises (k) which have resulted from it, and, above all, the modern revolutions of commerce, made these virtues more necessary to her than ever. Luxury, that destructive scourge of commerce itself, of which narrow minds and political empires believe it is the aliment; luxury, the inseparable forerunner and eternal companion of servitude, reigns already with despotic sway over this factious country, which stands in so much need of liberty, and which these different causes, combined with a great many others, such as the ambition, the influence, *and the usurpations* of

(k) Besides the general excise of the provinces, the regency of each town imposes a municipal excise, the regulation of which is absolutely at their discretion. The consequences of this abuse are evident, which is introduced even into the country. There is only the article of the excise on wine for which the municipal regencies must have the authority of the States. Every nation which pays its imposts to power, arbitrary *quoad hoc*, were it yet free, will not long continue to be so. *The excise, and the abuses in its collection will also ruin England, or is at least one of the manifest causes of its decline.* See note IV. at the end of this work.

of the Stadtholderate, will shortly deliver, or restore to the ocean. I have therefore undertaken to praise only the police of Amsterdam, which is truly admirable. Let us look at England.

I know that *London* does not afford so favourable an example as Amsterdam. But tell me, I beseech you, in the first place, if no disorders or murders ever happen at Paris? most certainly these crimes are committed in spite of your sublime precautions. And why should not other cities be exposed to the same accidents? Why impute solely to judiciary delays, to the inviolable respect for legal forms, what is inseparable from human corruption, from the tumult and the manners of great cities? Would it not be more true to say, that *the iniquity of your laws; the unjust distribution of property, the atrocity of punishments, the loads on wretchedness, the insolence and impunity of wealth*, the abuse or bad direction of power, in short, produce the crimes. In doing good some evil happens. Does it follow that evil is the effect of good? and to prevent this evil, must we effect the public ruin? This however is precisely what you do by substituting an arbitrary police for the observance of the laws. To bring a just charge against them it must be first proved that they are guilty of the disorders you pretend to remedy; and in order to prove that, it must be proved that these can never happen with your method. Try if this task be not beyond your strength.

At all events men *live* in London, and, in spite of the Parisians, there are there more inhabitants than in Paris (1); which in fact is neither
to

(1) From 1749, to 1757, according to the tables of Mr. Corbyn Morris, there have died annually in London 21,870 persons; 21,870 multiplied by 35, (the usual method of calculating

to the honour nor advantage of the British isles, notwithstanding, from local circumstances, and political reasons without number, that city may naturally and without danger for the country, contain many more men than should be reckoned in the capital of France. Men live, as I said, in London, and the inhabitants are contented with their lot. With a little more vigilance, and less corrupted manners, one would be still more tranquil, *although the nation would lose all perhaps, in losing its turbulence : and I doubt whether in general the regularity of a convent of monks would suit a society of freemen.* But I will not enter into a discussion of what is alledged against the police in England. I abstract also the present circumstances of that country, which I have lost sight of by my imprisonment, which arise rather from a violation of natural liberty than from its excess, and *to which, after all, the English will owe their safety, if they lose no more than the object that fed their ambitious dreams, if the sublime resistance of America aids them in the recovery of their liberties, invaded on every side,*
if

ing population from the bills of mortality) give 765,450, that is to say, after the respective calculation of the mortalities in Paris, 107,450 persons more than in the latter capital. (Vide tables of our illustrious Buffon.) Sir William Petty (essays on political arithmetic) reckons only thirty living for one dead; but our Buffon maintains that the difference of the climate of Paris and that of London cannot reach a seventh in point of mortality. Only as men do not grow so old in London as in Paris, he estimates the number of living as thirty-one relatively to the deaths, and thus finds that London contains 677,970 persons, whilst Paris contains only 658,000. London therefore is more populous than Paris by about a thirty-third. (*See Hist. Nat. Comparaison des tables de la mortalité en France, avec les tables de la mortalité à Londres*, from whence these details are taken.) It furnishes another observation very important for the English; which is, that London stands in need of being recruited by more than half the number of the births to support its population.

if they unanimously discover that the systems introduced into the counsels of their court have greatly advanced the work of despotism in their country ; that the beautiful theory of their government is very ill applied in practice, and that the component parts of their legislative body are ill adjusted and combined. IT IS ONLY BY NATIONAL CALAMITIES, THAT A NATIONAL CORRUPTION CAN BE CURED. Bolingbroke has pronounced long before me, this dreadful truth, and I add, that such calamities then become a necessary and desirable crisis ; for it is with nations as with men : prosperity seems to rob them of their judgment with their manners.

But setting all this aside, or, if you will, going some years back, I ask where the labourer is more happy, or richer than in England ? where the citizen is more independent of every power but that of law ? I ask where population, agriculture and commerce are in a more flourishing state ? In what other kingdom of Europe has one single borough been seen accompanying its king with one hundred and eighty ploughs (m) ; a retinue which proves better

(See *Hist. Nat. Comparaison des tables de la mortalité en France, avec les tables de la mortalité à Londres*, from whence these details are taken.) It furnishes another observation very important for the English ; which is, that London stands in need of being recruited by more than half the number of the births to support its population.

(m) The borough of *Godmanchester*. From 1746 to 1750, England exported wheat, rye, barley, malt, and oatmeal to the amount of 7,405,876*l.* sterling, or near one hundred and sixty-seven millions of our money. *They have taken from me a very exact state of our imports, and exports, as well as all my papers, memoirs and notes relative to the French administration :* but I say boldly, compare and judge. Mr. *Quefney* pretends, in his beautiful article *grains*, in the *Encyclopedie*, that we lose annually the four-fifths of the produce of our culture. As for the commercial profits,

better than all the books in the world, the wisdom of a government honoured by such prosperity? Can we have the presumption to compare our prosperity with theirs, considering the proportion of our respective territories, and our natural advantages? I ask, in fine, whether England be a *coupe gorge*? Whether we see that nation casting an envious eye on the constitution of her neighbours, invoking their police, and desiring that cadaverous tranquillity produced by our arbitrary administration?

If only one answer can be given to these questions, it must be allowed that the law which preserves the citizen from ministerial and extrajudicial manœuvres; that the act of *habeas corpus*, which renders the personal property of the weakest individual of the community as sacred, and perhaps more secure than that of the brother of the king, has not been productive of such great disorders. Shall we always fall then into the snares spread for us by the government? Shall we always have the rage of believing that nothing is practicable but what

profits, they are more uncertain, more illusory, less within the reach of ascertainment, and greatly diminished in England by the defects in her political systems, the inevitable consequences of her enormous debt, the rage for monopolies, national hatreds, &c. (See an excellent work of *Dean Tucker* on this subject, entitled: *A brief essay on trade, or the advantages and disadvantages which respectively attend France and Great Britain with respect to trade, &c.* 1753, and a feeble imitation of it by Mr. Dangeul.) Sir *Charles Whitworth* has pretended to prove, from authentic tables of the progressive imports and exports of Great Britain, from 1697 to 1773, that the balance of trade is in favour of his country to the amount of two hundred and sixty eight millions sterling, or seven thousand millions of money, that is to say, *annually* averaged, ninety millions of France. I think it might be demonstrated that there are many double calculations in these tables, and consequently there ought be a considerable deduction from the result. But at all events, however just the diffidence of enlightened men in calculations and mercantile profits, applied to principles, and political conclusions may be, *compare and judge*.

what we do ourselves? And whilst our *petits-maitres* are aping all the ridiculous fashions of the frivolous part of London; whilst they dress themselves *à l'Angloise*, whilst they trot and run about *à l'Angloise*, and maintain English jockeys at a great expence, and English horses, which certainly would be no better than our own, did not the government interfere in their bringing up, and prescribe rules to the proprietors, who do, and always must know their own interests better than it can do; may I not be permitted to think that we might find more worthy subjects of imitation amongst these proud Britons, and, wherewithal, especially, *to cure us of our servile prejudices?*..... Do you applaud your police, O ye Parisians!—the filthiness of your people and your streets infect you: your houses, excessively elevated, intercept the current of air, or, foolishly suspended over the water, confine the vapours, and continually menace you with ruin. You are poisoned by your wine-merchants: You have all necessary liberty to prepare your food in the most dangerous of metals: Your quacks of every kind sport with impunity with your lives: Books of medicine, remedies, prescriptions the most absurd, printed with the public sanction, put edged weapons into the hands of thousands of ignorant and senseless people: Plots the most multiplied, and the most dangerous are continually forming against your health, and your purses: Extravagant and fatal prejudices are maintained by authority or intrigue: Your bells call down the lightning of heaven upon you and your houses, and, to honour God, continually expose the lives of men: A pestilential vapour exhales from the tombs on which you walk; and where you are sometimes shut up alive, or at least without your debt being ascertained, though attested by witnesses who saw nothing

thing of the matter (n) : Your hospitals are a continual focus of horrid evils, and make humanity shudder : You face every day in your ridiculously constructed theatres, the most contagious infalubrity (o). You are feeble, infirm, and unhealthy : Your lives are short and wretched : And what is worse, **YOU ARE SLAVES** ; but in return, every syllable is known that passes in your coffee-houses, and even in your own families ; a man would be discovered at the centre of the earth : Your spies are very industrious, and you will easily recover the trinkets you may have lost, if you can pay better than the thief who has stolen them. O Parisians, pride yourselves on your sublime police. But since a city containing two hundred thousand souls ; since another city still larger than Paris ; since a kingdom peopled by seven or eight millions of inhabitants subsist, flourish and prosper, without all this apparatus of despotism, which make foreigners treat us as slaves ; without the assistance of those tyrannical orders, always in readiness indiscriminately to strike at every citizen, but especially the weak, according to the good pleasure of ministers, who compound their own interest with that of their sovereign, as if the one could never be in opposition to the other ; I will

(n) " We find at Turin, says the learned Mr. Grosely in his observations on Italy, the ancient custom preserved in Italy, and lost in the greater part of France, of interring the dead with their faces uncovered ; a practice which it is astonishing they should not revive in France, considering some accidents that happened during our stay at Paris. Indeed, what weight can the mortuary acts have ? What do those that assign them attest ? they are acts *de visu* given by *Blind-men*."

(o) I do not know whether any of these abuses be corrected. It will be always true, however, that all these inconveniences have existed since the institution of our ADMIRABLE POLICE.

will always maintain that it is madness to believe that our police, and our *Lettres de Cachet* are essentially *necessary* to society.

As for those sudden events, fortunately so rare, where it is absolutely necessary to dispense with forms, in order to remedy a greater evil, or to prevent its consequences, every body feels that they must form an exception. When the public weal is threatened with destruction, the question then is to save the state, and not the authority of the laws, which would perish with it. We ought cheerfully to lay aside, in favour of liberty, those maxims which were only established for its preservation, whenever they are found inadequate to that object. Such ever was the supposed situation of Rome, when she created a dictator (p). Yet this office soon became alike odious and suspected; the fear with which it inspired the Romans for their liberty, made them suspend the use of it for more than one hundred and twenty years (q): the law of Flaccus, which re-established it, was purely the effect of violence and terror; they could not behold without detestation the decree which gave to one citizen the power of condemning another without any form of process (r), and from the hour in which manners, virtue, public spirit, gave way to luxury, and ambition, and the dictatorship became perpetual, the most cruel tyranny was established.

But

(p) The decree which preceded the nomination of this supreme magistrate, before whom all laws were suspended, was called *senatus consultum NECESSITATIS*.

(q) *Cujus honoris usurpatio per annos CXX. intermisso, ut appareat populum Romanum usum dictatoris non tam desiderasse, quam tenuisse potestatem imperii, que priores ad vindicandam maximis periculis remp. usi fuerunt.* (Vell. Paterc. 2. 28.)

(r) *De leg. agrar. Con. Rull. 32.*

But when the *necessity* is real, it is from thence evident, and puts an end to every other consideration. Such circumstances allow neither the time, nor the desire, for opposition. It is not then the prince alone who is dispensed from the observance of laws, it is every the meanest citizen. Each man has the right of employing for himself and for others all the means in his power ; all orders of the state become equal. An accident which can thus dissolve all the bands of society, can only be of a problematical existence. Were such crises frequent, every wheel of the political machine would break. Of what use would be the laws, if their course were continually interrupted ?

Let not the word NECESSITY therefore be abused, so as to authorize every other act of tyranny, as well as that of arbitrary imprisonments. Let it never be introduced into a legal cause, or into a circumstance provided for by the laws. When the fatal necessity really exists, it stands in need of no explication ; no person calls it in question. If the *evidence* of the fact were not its only character, who should decide on its existence ? The *sovereign* ? It is clear that there will no longer exist any other rule than *his will*, if that will can dispense with the execution of the laws. This supposition therefore of an urgent case is wholly inapplicable to the present question ; we are examining whether the use of *lettres de cachet* be just, whether it be good. We are answered, that there are circumstances wherein they are necessary. Wherefore this ridiculous evasion ? Do these circumstances exist ? No, they do not exist, and it is a moot point whether on such an occasion they would be obeyed ; for arbitrary orders can only be in force in times of the most peaceable and most complete obedience : at any other they are but a sword

sword of lead. But it would be singular indeed if *a political necessity*, which ought to be stamped with the character of evidence, should have continued for so many years, I had almost said ages, without being perceived by any other than the sovereign, or his ministers.

I have demonstrated that arbitrary imprisonments are reprobated by positive, and by natural right: that the exercise of that prerogative is incompatible with justice, the common source of all human relations, and the only solid basis of all authority. I have proved that the tyranny of *lettres de cachet* is the most formidable outrage on political liberty, and the most fatal to society; that extra-judicial punishments, so far from being necessary in state affairs, are then only the more dangerous, and the more unjust. These truths have been established both by principles and by facts: I have deduced these conclusions: I have opposed them to the most specious objections. But if illegal imprisonments be not excuseable *in affairs of state*, let us examine what can be said of them when they are only the instruments of revenge, of influence, of domestic hatred, of private interest, and not unfrequently of the vilest corruption. In a word, let us consider *lettres de cachet* as they relate to individuals.

C H A P. XI.

The prerogative of arbitrary and indefinite imprisonments considered relatively to individuals. Are there any crimes which ought not to be revealed? Composition of state prisons. Necessary effects resulting from remaining in them, where oppression levels all and every thing, whether the prisoners have or have not a communication with each other. State prisons considered relatively to population.

TO see how *lettres de cachet* are multiplied, one would imagine that the liberty of the citizen is the most contemptible of all his possessions. The heads of administration, and of course their *commis*; the intendants, and of course their sub-delegates; the commandants of provinces, and their substitutes; the lieutenant of police, who can derive his information only from spies and informers, that is, from despicable and suspicious witnesses; the great, who already possess such advantages over the little; they who pander to their passions, that is, the vilest of beings; the rich, who have the universal corrupter at their disposal; hating and intolerant bishops, for they are priests (a),
intriguing

(a) See in the remonstrances of the Parliament of Paris, of the 9th of April, 1753, inconceivable details on the tyranny of *lettres de cachet*, applied to affairs of religion. Besides vexations without number, ecclesiastics exiled, imprisoned, banished, you will there find interdictions of priests, prohibitions from preaching, from confessing, from administering the sacraments, &c. &c. from approaching the holy table, from appearing in the choir in presence of the bishop, &c. &c. the whole by virtue of *lettre de cachet*. See particularly p. 140 to 145.

intriguing corps, which have made so many efforts to withdraw themselves from the jurisdiction of the magistrates, and who carefully preserve the last sparks of fanaticism; all such, in short, as have some credit, and who choose to be either ridiculous or unjust, or vicious with impunity, draw from the inexhaustible source of lettres de cachet. See how all countries where manners and liberty are corrupted, resemble each other. Xenophon said more than twenty centuries ago, “the great difference Lycurgus has made between Lacedæmon, and other cities, consists in his making all the citizens obey the laws: they fly at the call of the magistrate: but at Athens a rich man would be miserable, if he should be thought to have any dependance on the magistracy.” This is precisely our situation. The people are under the yoke of the law, which is for them only another badge of servitude, since it is not the safeguard of their liberty; and every man who enjoys some consideration, would think it beneath him to demand the reparation of an injury at the hands of ordinary justice.

(b) Every manœuvre, every vexation, every species of barbarity is legitimated, and even honoured, when it is the proof of favour.

Here, an implacable minister takes vengeance for a caustic anecdote, an epigram, a song (c); punishes an indiscretion, a loose con-

(b) *Remonstrance de la Cour des Aides*, of the 14th August, 1770.

(c) An edict of the king, of 1757, declares, that all authors, printers, and hawkers of books, tending to attack religion, to stir up the minds of the people, to impeach the authority of the king, and to trouble the tranquillity of the state, shall be condemned to die. Moyard de Vouglans, in his detestable book, *des Loix Criminelles de France, dans leur Ordre naturel*, has recorded this abominable law, which the most atrocious despotism had never dared even

tors, their importunate creditors. A lettre de cachet gives a general discharge. Their ingenious cupidity will find the means to interest their ministers, or their commis, or their favourites; for the visiers, and the half visiers, and their sultanas also, are fond of gold (f).

And that father, intoxicated by the philters of love, and the poison of jealousy. He makes himself a party against his child: he is led astray by a vile courtesan: she must be avenged: her caprices must be satiated, and her fears prevented. " My son! My ungrateful son dares
 " to cherish his mother (g); he dares to lament
 " her situation, and to weep over her misfortune!
 " It is too much: the measure is full: let him be
 " put into a dungeon, to learn to respect the ob-
 " ject of my love: he shall no longer be permitted
 " to cast a rash eye on my conduct, and my ma-
 " nagement. If he has hitherto kept silence, his
 " looks reproach me, and I can no longer bear
 " them. If I have dissipated the fortune which
 " silly ancestors have entailed upon him, I shall
 " then be accountable to no one; I still ruin my-
 " self,

(f) Alas! is it not also the first passion of princes? It is disguised under a more splendid decoration; but lift up the veil, you will find concealed under it the love of gold.

————— *Diffidit hostium*
Portas vir Macedo, et subruit æmulos
Reges muneribus. (Horat.)

But what did Philip want when he was lavishing his gold? To govern Greece. And why govern Greece? To carry off by force the treasures of the Great King. If kings, says Seneca, become sanguinary robbers, if they overturn cities, raised by the labours of a great number of ages, it is to search for gold amongst their reeking ashes. (*De Ira*, l. III. 32.)

(g) To avoid all malignant allusions, it is necessary to acquaint the reader, that this is the history of the Vicomte de L***, a man of quality in Brittany, and that there is no other anecdote in view.

“ self, without the risk of contradiction ; I am a
 “ father, not to protect, but to punish.”
 Already does this man beset the minister. He dis-
 closes his *paternal anguish* : the faults of youth are
 crimes : the excess of sensibility, the fire of the
 passions, that creator of great things, are so many
 fatal presages. How can a father be suspect-
 ed of such cruelty and perfidy ? The minister
 signs ; he has examined into nothing ; but can a
 father be capable of deceiving him ? Oh !
 no, nor doubtless even of deceiving himself.
 The unhappy young man is loaded with irons ; he
 is entombed alive : perhaps it may cost him his
 life, or what is more cruel, his reason. Bro-
 ken down by grief, every thing is blunted in him :
 the understanding, and the senses. Does he sur-
 vive the first shock ? He sees arrive, with linger-
 ing steps, stupidity, despair, and, perhaps, mad-
 ness ; for an excessive and continued misfortune,
 without compensation, and without interval, may
 break the strongest mind. Then would his
 tyrant behold himself at the summit of his wishes ;
 then, peaceably usurping all his fortune, he would
 hurry him into a mad-house, where, for a mode-
 rate stipend, this abhorred son would be chained,
 beaten, and fed like a wild beast.

O my readers ! the names of the personages are
 wanting to this picture ; but you feel that it is
 painted after nature. Who, amongst us,
 alas ! is unacquainted with several examples of si-
 milar iniquities ? Who is a stranger to the facility
 with which these orders are granted, which punish
 faults as crimes ; which bury in dreary dungeons
 whole generations, and frequently great talents ?
Luxembourg might have perished in the Bastile, had
 not the death of *Louvois* opened to him the career
 of liberty and of glory. France, so long victori-

ous, and ruined by her victories, is threatened with invasion. *Lisle* must be defended: it is necessary to stop the progress of a superior and triumphant enemy: *Boufflers*, virtuous in the midst of a corrupted court, a patriot in a despotic state, is charged with this important commission: the choice of his lieutenants is left to him; for pride is tamed by adversity: he goes to the *Bastile* to search the man whom he associates in his labours.

—Let us cite a more recent, and very deplorable example. The unfortunate *Labourdonnais*, whom such great talents and eminent successes should have led to the greatest things, found in the *Bastile* that cruel and premature death, which robbed the nation of the man from whom she hoped her vengeance. Oh! how many distributors of lettres de cachet will succeed each other, before they restore us a *Labourdonnais*!

It takes up very little time to deliver these orders, which deprive the state of so many subjects; there is nothing but to sign them: one acquires friends by this complaisance; but to examine, to discuss (h), to contradict, to confront, to read the memorials of a man from whom nothing is to be expected, who is not present, whom one is not obliged to listen to, because one does not see him; who must be in the wrong, because he is the weakest; to weigh his reasons, to balance his objections, and replies. Alas! the possibility of doing it . . . Intrigues . . . the court . . . business . . . pleasure

(h) When St. Evremond went to thank Cardinal Mazarin for having released him from the *Bastile*, the minister said to him: *that he was persuaded of his innocence; but that in the post he occupied, they were oblig'd to listen to so many things, it was very difficult to distinguish the true from the false.* (See the life of St. Evremond, by Mr. Desmaizeaux.) Is not this excuse very consolatory, and the country in which it is admitted *very free*?

pleasure one cannot do every thing
 I have not the time after all, he is but a
 man they are but men Madman !
 to call them men ! slaves, are they not ?
 innocent, or guilty, let them perish ; so wills the
 visir ; he ordains it ; his will suffices (i) What
 other arret, alas ! can be expected from ministers
 erected into judges ! “ A magistrate, sensible to
 his duties, to humanity alone, cannot in the soli-
 tude of his cabinet, without shuddering with hor-
 ror, and with pity, cast his eyes on those papers,
 the unfortunate monuments of guilt or innocence.
 He seems to hear the voice of lamentation, issuing
 from those fatal writings, and pressing him to de-
 cide upon the fate of a citizen, a husband, the fa-
 ther of a family. What judge so pitiless, if he be
 charged with a single criminal process, as to pass
 unmoved before a prison ? It is I, will he say, who
 retain my fellow-creature, perhaps my equal, my
 fellow citizen, a man, in short, in this detestable
 abode. It is I, who bind him, who daily shut up-
 on him these odious gates. Despair, perhaps, has
 taken possession of his soul : he pours forth to hea-
 ven my name with maledictions, and calls to wit-
 ness against me, the great Judge, who is our ob-
 server, and must judge us both.”

These are the words, and, without doubt, the
 feelings (for no man can thus express himself
 without sensibility) of an eloquent philosopher (k),
 charged with the august, and redoubtable function
 of rendering justice. But the courtiers who are at
 the helm of affairs, through the passions of their
 masters, or their favourites ; those men, whose
 hearts

(i) Juv. l. II. sat. VI.

O demens ! ita servus homo est ? nil fecerit, esto :

Hoc volo, fit jubeo ; stet pro ratione voluntas.

(k) Mr. Servant.

hearts are dried up by ambition, whose understandings are absorbed by intrigue, who have no other title to authority but favour, as if that alone supplied the want of talents; who have neither principles, nor system, nor knowledge, nor information, who can neither read, nor write, nor listen, nor reflect; who constantly separate the interest of government from that of the nation; and their own private interest from that of government; whose ideas are limited to the extent of their rights, as ministers, and employ themselves only in the arduous task of maintaining them in the middle of that tempestuous ocean, where the wave that hurried them in an instant to the height of the rock, can and must swallow them up the next moment; how should they comprehend these sentimental truths? All this will appear to them so much criminal, perhaps, but at least ridiculous declamation. But should these principles be within their reach, should they not reject them; how, as long as authority shall encroach upon every jurisdiction, shall draw all to its own center, shall inspect every detail, shall will, and see, and ordain every thing; how shall the well intentioned support themselves in their situations? How will they be able to expedite innumerable affairs, should they attempt to rise above the vicissitudes of intrigues, and to proceed in the right line to justice, without suffering solicitations, or authority, or idleness, or importunity, or gold, or fear, to divert them from their duty? No, no, it is not possible to conciliate equity with the jurisprudence of lettres de cachet. Let us take the word of the ablest tyrants, who knew better than any body the evils produced by his abominable policy. A proposal was made to the senate to take cognizance of all actions and words that should be derogatory from the respect due
to

to the majesty of the prince. *We have not leisure enough*, replied Tiberius, *to dedicate our time to this novel species of affairs. Once you open that door, you will have nothing but that sort of business to treat of; whoever has an enemy will take that method of destroying him* (l). What would he have said, had they proposed to him to enter into the domestic concerns of all the citizens, and to decide on them by the expeditious method of *lettres de cachet*? Have ministers more time and fewer occupations than the judges? and is less care and attention necessary, scrupulously and conscientiously to examine whether a *lettre de cachet* should, or should not be issued, than to pronounce an *arret* for *well known reasons*?

But some of my readers will say, facts speak against you; for the men in whose behalf you plead are little worthy of our regret, or of our pity. Thus *lettres de cachet* are issued with discernment and with justice. “Let these celebrated prisons, in fact, be thrown open, we shall find in them some state prisoners, or others, WHOSE CRIMES OUGHT NOT TO BE REVEALED; a quantity of *villains*, who only wait for the liberty of getting hanged, and *libertines*, who profit by the lessons of such good masters; mad-men, who vegetate in them; old men, in short, who, ruined by debauchery and dissipation, are happy there to find an asylum!” Let us give a complete and minute refutation of this objection, which I extract from a celebrated work (m).

I have been very inattentively read, or I have explained myself very ill, if it be necessary again
to

(l) *Non tantum officii habemus, ut implicare nos pluribus negotiis debeamus. Si hanc fenestram aperuitis, nihil aliud agi sinetis: omnium inimiciæ hoc prætextu ad vos deferentur.* (Sueton.)

(m) *Ami des hommes*, c. VII. partie II.

to prove, that there are no crimes which ought not to be revealed, when they are known to the public power, appointed to prosecute them, and which for this reason ought not to judge them, because it accuses, and that a third party is necessary between the accused and the accuser. The sovereign commits an act of tyranny when he judges, but he commits another when he punishes secretly ; and he prevaricates when he neglects to punish ; for he betrays the public confidence : he encourages the bad, since the certainty of punishment is the chief means of restraining them. Does he punish in secret ? He makes no example, which is the first, or rather the sole political object of punishment (n) : he leaves suspicions of his justice, and terrifies society by a real or apparent abuse of his authority. “ What more unheard-of than a nocturnal execution,” says Seneca, who wrote, however, in the very bosom of the most tremendous despotism, and under the most furious of tyrants, “ they are murders buried under darkness ; but chastisements are of so much the more utility in point of example, and for the reformation of manners, as they are the more notorious (o).” In a word, every

(n) *Et pœna ad paucos, metus ad omnes perveniat*, says Cicero.

(o) *De ira*, l. III. c. 19. What follows is very remarkable. “ I shall be answered, that what surprises so much, was a daily transaction of this monster. (Caligula.) At least we shall find nobody but him who has conceived the idea of stopping the mouth of the persons executed with a sponge, to deprive them of the faculty of uttering a single word. When was a dying man ever deprived of the power of complaining ? He feared, lest grief might make him express himself in his last moments with too much freedom. . . . As no sponges were to be found, he made them tear the robes of those unfortunate men, in order to fill their mouths with the shreds. Ferocious tyrant ! Allow thy victims, at least, to render their last sigh, let their
“ souls

every man is born with the entire property of his person: no human authority has any power over him, but inasmuch as he makes an attack upon the rights of others: this attack should be notorious, legally ascertained, publicly punished, to serve as an irrefragable proof that society has been offended, and received the proper reparation. These are simple and clear principles, already established, and, in some measure demonstrated by their very exposition. If it be necessary again to recur to them, listen to a philosopher, whose reason always enlightens his sensibility, and whose sensibility embellishes his reason, and renders it attracting. The Marquis de Beccaria, throws together in a few words whatever can be said on this important question.

“ What are, says he, what are the motives by
 “ which they attempt to justify secret accusations
 “ and punishments? The public tranquillity, the
 “ support of government! That must be a strange
 “ constitution, it must be allowed, where the go-
 “ vernment which has already force and opinion
 “ in its favour, is yet afraid of every individual!
 “ The safety of the accuser? the laws then are
 “ insufficient for his protection! There are sub-
 “ jects then more powerful than the sovereign and
 “ the laws! The necessity of saving the informer
 “ from infamy? that is to say, that public calum-
 “ ny shall be punished, and secret calumny
 “ authorized in one and the same state! The
 “ nature of the crime? that is right, if actions
 “ either indifferent, or even useful to the public
 “ welfare

“ souls have vent.” We see that the invention of *gags* is modern. I intreat those who recall to mind the nocturnal executions, of which by chance they have had a glimpse, and the execution of *Lally*, to reflect how much the science of government is improved since the days of Caligula.

“ welfare are informed against, and punished as
 “ criminal: in that case the accusation and the
 “ judgment can never be kept too secret. But
 “ can there be any crime, that is to say, any vio-
 “ lation of the rights of society, that it is not the
 “ interest of all publicly to punish (p)? I think it
 “ will be difficult to answer to this reasoning, so
 “ strongly urged, and so well connected; and that
 “ it cannot be refuted, especially by him who has
 “ written: that judgments without law, and with-
 “ out appeal, summary and corporal condemna-
 “ tions, are a prerogative which would degenerate
 “ into tyranny in the hands even of equity, did
 “ she not fly back with horror from its accept-
 “ ance (*);” but without urging any farther a
 discussion, which might be deemed by malignant
 persons, a personal satire, and which might offend
 a philosopher I respect, let us bewail the too fre-
 quent examples which seem to legitimate the ty-
 ranny of lettres de cachet, which give credit to
 that odious stretch of power; which citizens,
 whose patriotism is boasted, do not blush to invoke,
 in contempt of the laws, the magistracy, and of
 the right of nations. O men! will you never then
 be tired of inviting tyranny by your inconsiderate
 maxims, your foolish enthusiasm, your cowardly
 flatteries, or your stupid credulity? These fatal
 prejudices, that pusillanimous docility, that barren
 egotism, those venal compliances which infect all
 classes of society, embolden those in power, who
 might

(p) *De delictis, sect. XV. Accuse segrete.* Trajan wrote to Pliny:
Sine auctore vero propositi libelli nullo crimine locum habere debent;
nam et pessimi exempli, nec nostri seculi est. “ In no sort of crimes,
 “ should informations be received, without being first subscribed:
 “ that is a detestable example, and does not suit the principles of
 “ our reign.”

(*) *Ami des hommes, v. VI. page 72.*

might be frightened, restrained, guided, or perhaps instructed, had the public opinion a better tendency. But as for you, you sell yourselves; your masters smile at your errors: they foment them: they profit by them: they accustom themselves to usurpation: they extend it over all: they substitute fact in the place of right: they take the means for the end: they acquire themselves the persuasion that they have the right to oppress you, and that they may do it with impunity. This illusion will terminate inevitably in their ruin; but you suffer in expecting the catastrophe; and you will still suffer on the terrible dénouement. O men! never forget that *THE SECRET* is the genuine shield of tyranny. It is in the midst of that darkness in which she is enveloped, that she sharpens her sword, and rivets your chains. What! you wish every thing that interests the public to be a secret! You wish to produce the general repose by disturbing private tranquillity! You wish to unchain calumny, and invest it with impunity! You wish to arm brothers with the power of informing against brothers! You wish to see every man hang down his head at the sight of another, and tremble lest he find an enemy in his fellow-citizen! Let the civil inquisition, not less odious, and more formidable, if possible, than the religious inquisition, establish in society an intestine, hollow, and hidden, but for that very reason a more fatal and more continual war. This were well worth the pains of uniting in society!

I have replied to the first part of the objection, by proving that every delinquency should be legally ascertained, and that the infliction of any punishment whatsoever, is an act of tyranny when it is not determined by the law, publicly decreed and received. Let us now examine what we are told
of

of the composition of state prisons, *where are to be found in general, it is said, only prisoners of state, villains, libertines, madmen, and old men ruined by their debauchery.*

I might observe, that it is wrong to decide the general cause of humanity from partial circumstances; that our private passions, our personal prepossessions, our momentary emotions, ought never to determine our opinions and our conduct, in opposition to the immutable principles of justice and of liberty. Alas! what signifies it, in fact, whether a man, smitten by a lettre de cachet, be of little importance? That lettre de cachet, which may equally smite the most virtuous citizen, is it not of itself then sufficiently interesting to the whole body of the nation?

I might next inquire why *rogues* and *libertines* are confounded together? What is *libertinism*? Where is the law pronouncing punishment for this vague and indefinite delinquency? There does not exist, nor can there exist any; *for we have not the right*, Mr. de Vauvenargues very well remarks, *to render those unhappy whom we cannot render good.* I might ask, why leave young people of dangerous dispositions with men who will conduct them rapidly to the last pitch of corruption? What conclusion is meant to be drawn from that pleasantry which revolts humanity, and good taste; *who gather instruction under such good masters?* If this mixture of *libertines* and *rogues* in short, exists, as it is too true, why does the government, by this odious, infamous, and atrocious assemblage, make itself guilty of the most abominable of transgressions, that of conducting men to vice?

But quitting these details, which would afford me a wide field, if I wished to enlarge with common-place observations, I formally defy any person
in

in the world, to prove that *prisoners of state, villains, libertines, madmen, or ruined old men* compose, I will not say the greatest number, I say the third, the fourth, nay, the tenth part of the inhabitants of the strong castles, houses of correction, and state prisons. It is for the writer I am refuting, and who was himself detained, for a very honourable cause, in the dungeon of Vincennes, at the requisition of the publicans of the kingdom: it is for him, I say, to prove the truth of his rash allegation. As for myself, who have the misfortune to know one of those habitations of sorrow, where the prisoners are allowed to communicate together, and who am at this hour an inhabitant of the dungeon of Vincennes, where two prisoners never see each other, a new species of torment, of which I had never formed an idea, I shall declare what I know of these houses peopled by *lettres de cachet*; what I know, from having seen it, for I have imposed a law on myself not to advance any anecdote of which I was not a witness, or do not myself furnish the example, or of which I am unable, in case of need, to produce the legal proof; and may I be punished by the everlasting contempt of all good men, if I diminish or exaggerate the least in the world any of the details which are consigned in this work.

I know the detail of the composition of six forts, which contained in 1775 three hundred prisoners. In that which I inhabited eight months, I had a very near view, and observed thirty of them, of the greatest part of whom I was the comforter and the counsel; so that the proofs of what they told me of their affairs passed through my hands. The only crime of three of these unfortunate men, consisted in their having married handsome wives, *protected*, or rather *kept* by some of those decorated valets,

valets, called noblemen (*grand seigneurs*), no doubt by antiphrasis, and who are at once the vilest of slaves and the most unfeeling tyrants. It does not suit me to name to the public the perfidious wives of whom I speak; but should any one dare to put me to the proof, I would denounce them to the censor of manners, and furnish him with the proofs of their infamy.

There were twenty-seven other prisoners in this castle; the imprisonment of not one of whom had the most distant connection with any public or state affair. One man only, of the dregs of the people, might pass for a villain: six others appeared to me indifferent characters: one of whom, rather mad than wicked, was kept in irons by a near relation, who lives publicly with the sister of the prisoner; all the rest, except a poor old man, whose history we shall shortly read, were young, simple, and without experience. Many of them possessed natural wit and talents, which may be easily conceived; the fire of the passions almost always unfolding that of genius; and, it being the usual fate of genius to excite the hatred of mediocrity, which, besides, can never comprehend, that those heads on which the vulgar bestow the name of *bad*, are the *good ones*, or at least the only heads capable of becoming so (q); and that the absence of the passions,

(q) The ancients, from whom I am not sparing of quotations, because I am never tired of reading them; the ancients, among whom we find all the moral and political virtues, although their system was not perfectly combined, and who were acquainted with men; because their dignified and manly *thought* was free and independent, esteemed impetuous youth: *wine*, said they, *improves when it is harsh and rough at the first; it is not worth keeping when it is too soon drinkable: it is the same with young men.* (Senec. Ep. 36.)

passions, which saves a man from so many follies, renders him at the same time almost an useless member of society. It is certain, that the greatest part of these prisoners incurred the risk of being totally corrupted ; for, such is nature, and one of the inestimable advantages of these houses, where oppression levels all, and every thing, punishes errors as vices, and turbulence as crimes ; a truly detestable tyranny, which makes men indifferent to vice and to virtue ; which makes them wish for death as the sole remedy of their misfortunes ; for, who would bear the strokes and injuries of fortune, the oppressor's wrongs, the proud man's scorn, the outrages of a cowardly enemy, the most devouring anguish, the delays and the denials of justice, when he might, in a moment, free himself from these intolerable burthens ? (*Who would fardels bear ?* Shakespeare's Hamlet.) But what is the result, in short, of this odious mixture of innocent and guilty, of corruption and simplicity ? Do the prisoners associate ? One pestiferous breath alone infects all the others. Are they always shut up, and constantly apart ? They become gloomy, atrocious, and madmen. *The source of every evil, says Seneca, is solitude* (r). It is very evident, from what we know of mankind, that young people, crowded together, soured by grief and persecution, agitated by the activity natural to their age, in proportion as it is the more compressed, must very soon form a thorough sink of vice ; and that he who comes amongst them without principles and without character, that is, with the two appendages of youth, which are, ignorance and tractability, is not long in adopting the *ton* of the house. As to the victims of ministerial
venge-

(r) Ep. 25.

vengeance, or of families more wealthy and more in favour, they are plunged into prisons of state, properly so called. These men are delivered over to all the listlessness of solitude, to all the horrors of uncertainty, the most intolerable of torments, deprived of all correspondence, of every amusement, of whatever kind we may imagine, of all exercise. Death would be to them a kindness! What do they wish them to become? To suppose that in such a situation a man can escape from madness, do they conceive that the moral and physical being, health, strength, the mind, the character, and the understanding, are not for ever affected by this violence? We shall find in the course of this work every thing that can aid us in resolving this question; but, at first sight, what man dares boast of being able to withstand such proofs? Who can answer for himself, that he will preserve in all its purity the taste of justice and of honour in the bosom of oppression, and in the midst of corrupted men? What sensibility will not be diminished under the weight of tyranny? Who will be equitable and generous, whilst equity and generosity are perpetually wounded in his person? Whilst he beholds around him nothing but oppressors and oppressed?

He las, aux cœurs heureux, les vertus sont faciles!

I do not know whether this verse of Mr. du Belloy, which is so affecting in the mouth of an unfortunate man, be true, and ought to be so: but I have written to the prime minister, and I repeat it to all my fellow-citizens, that the most courageous, and the purest virtue, may turn indignant, and be soured even to atrocity; and it is, above all, the denial of justice that hurries strong minds

minds to the excesses of despair. The despotism, which disfigures, devours, and destroys every thing, may render the most salutary passions, the most distinguished talents, the most holy affections, an inexhaustible source of pains, misfortunes, and of crimes ; but these crimes then become the crimes of those cowardly minds, of those confined spirits, who, regarding every ardent sentiment as a dangerous folly, every elevated thought as a reprehensible singularity, wish to reduce men to the measure of their tyranny, like to the cruel Procrustes, who bound his wretched subjects on a bed of iron, stretching the one out to its length, and amputating from the others whatever was superfluous.

In the fort I have been speaking of, I saw a man who had formerly fitted out vessels for the trade with our American colonies. He was seventy-two years of age, crippled with twenty musket-shots, beloved, esteemed, and employed by one of the best European governors ever sent by France into the new world : this old man, as a reward for his toils and his blood, was detained at the requisition of his daughter, who had represented that her father scandalized the public by his frequent drunkenness ; that he might fall, besides, and kill himself, and that it was necessary to shut him up to prevent his falling. In fact, this poor man, in whom I still discovered a very sound understanding, great views, a daring spirit, and wonderful knowledge, accumulated by experience, and concealed under the appearance of brutality, loved wine and brandy like a determined sailor ; he did not love prostitutes so well, and his daughter was one. The intendant of the province, or his sub-delegate, or his lacqueys, patronized her : the father had been so imprudent as to make use of menaces : they got

the start of him ; and this unfortunate man had traversed so many seas only to find in his native country chains, and his child a parricide. This fact, which I saw in *one* fort, and which I select from twenty others, may be paralleled under other forms in *one hundred*.

Every body knows, or may know, for example, the history of the *Sieur Riviere*, which I may be allowed to cite, as his Memoirs are printed, and his deplorable process decided in his favour (s). In 1776 he and his father were suspected, rather than accused of murder. Both of them were arrested by virtue of an order from the king, and conducted to *Bicêtre* (a prison in Paris) where the wretched old man died with chagrin and misery, and where the son languished *nine years*. His relations, who had taken possession of his property, affected, according to custom, very great alarms respecting his fate, and their honour, if he should be brought to trial. Chance made this innocent victim known to the worthy Mr. *Des Effarts*, who immediately published a memorial (*à consulter*) in his favour. Mr. Riviere obtained in 1775 the permission to be removed to the prison of Bayeux, where, his trial coming on, he was restored to liberty. Better late than never, doubtless ; but every body has not the strength, *or the weakness*, to remain in slavery ten years ; and, if Mr. Riviere had been in the dungeon of Vincennes, or in the Bastille, he would have died there, because he would never have known Mr. Des Effarts, nor any other defender.

A mother of a family (t), on the faith of a solemn marriage, lives with a man of known probity
for

(s) See tome XXX. *du Journal des causes célèbres*, 1776.

(t) See tome III. *du Journal des causes célèbres*, 1775, the affair of the Messieurs and Madame de Launay, against the abbés, prior, and religious of Clairvaux.

for *thirty years*. A peaceable citizen, a tender mother, an amiable wife, in what has she disturbed the public order? What can she have to apprehend? She is arrested, however, and thrown into a house of correction, with the vilest outcasts of her sex: *three whole years* does she groan there without succour, without correspondence; almost ignorant of what she is accused, and absolutely disabled from defending herself: her pension ceases to be paid; the nuns do not choose to maintain a pensioner at their expence; their applications occasion a closer enquiry into the conduct of this unfortunate woman. Alas! but for this incident, she might have passed the remainder of her life at *Sainte Pélagie*. She is restored at length to society, and clears up the cause of her detention. Some monks, in concert with a subaltern and mercenary agent, had reclaimed her husband as an apostate brother, and obtained an order from the king to carry him off. This husband, this father, enjoying for thirty years all the rights of a citizen, is torn suddenly from his wife, from three children, from society, and precipitated into a cell, there to expiate the crime of an apostasy, of which he is not guilty (u): he dies there; his fortune is usurped by the most infamous manœuvres; his children are abandoned, and one of them expires in an hospital; his wife is plunged into a place of ignominy At length, this tissue of horrors is unveiled; the villains who had plotted it, exposed to eyes of justice, see their designs frustrated; but the father has perished; but the child is dead; but the mother has lost her health and her happiness. See here, then, the fruits of the violences committed against the regular course of the laws!

Q²

Behold

(u) The act of profession has been proved false.

Behold the produce of your dark calumnies, and arbitrary orders ! Authority was imposed upon. Why does it expose itself to imposition ? It has been imposed upon. Is it for that less guilty, oppressive, tyrannical, or barbarous ? Can it ever repair the mischief it has done ? This woman has been indemnified. Vile men, now sold, and now purchasers ! hateful men, who make a traffic of every thing ! do you imagine, then, that your gold can satisfy outraged virtue ?

And the unhappy du Poëilly (x), dragged by a Lettre de Cachet into an ignominious prison, to compel him to enter into a cloister, where the barbarous predilection of his mother for her eldest son wished to bury him ; forced to pronounce the vows to escape from his dungeon ; smitten by a fresh Lettre de Cachet, when he would expostulate against this violence ; delivered, after *nineteen years* of captivity, by the minister, who avows at length he has been deceived ; shut up again when he demands his property, and again delivered, with an avowal that *authority had been imposed upon* ; tost about thus during *thirty-seven years* of prosecution, and not recovering the light and security until he had passed the two-thirds of his life a victim to arbitrary orders. Certainly, if ministers be permitted thus to sport with the liberty of mankind, and to justify themselves by confessing their errors ; if persecutions so barbarous, founded on such slight and defective informations, be a necessary spring of government, we must live in continual suspense between despair and death.

It would not be difficult for me to collect several volumes of similar anecdotes, accompanied with proofs ;

(x) See the detail of this affair in tome XXIII. *du Journal des causes célèbres*, 1777.

proofs ; but no person doubts of the frequent acts of injustice consummated by *Lettres de Cachet* ; notwithstanding they do not draw the same natural and incontrollable conclusions from them which I shall do in the course of this work : as for what respects the *ruined old men*, of whom the author of *l'Ami des Hommes* speaks, I never heard it alledged that strong castles were hospitals : this folly therefore is not worth my attention.

As to the madmen, who are to be met with in small numbers in some prisons, it is too true, that they who have lost the use of their reason must be concealed from the sight of society : but I must remark, that the greater part of the madmen shut up in houses of correction and state prisons, have become so, some from the excess of ill treatment, others from the horror of solitude, where they encounter at every instant the illusions of an imagination whetted by sorrow. I have read in a modern work the following frightful picture of our houses of force, compared with those of London, which are destined only for female prostitutes and vagabonds, disturbers of the public tranquillity, taken up and committed by the municipal police. “ We
“ do not there see the picture of hell, as in almost
“ all the houses of correction in Europe, where six
“ hundred wretches, pressed one against the other,
“ oppressed by their misery, their misfortunes,
“ their mutual respiration, by the vermin which
“ gnaws them, by their despair, and, by a still
“ more cruel listlessness, live in the fermentation
“ of a smothered rage, and groan as often as they
“ breathe. One never hears in London that any
“ of them commits homicides on the goalers, the
“ surgeons, the clergymen, who visit them, with
“ the sole view of getting out of this place of horror,

“ror and of repofing with more freedom on the
“wheel of the fcaffold (y).

I do

(y) *Voyageur François*, of Mr. de la Porte. I believe this fragment is taken from a work of merit of Mr. Grosley, called *Londres*. If you wifh to fee a truly diftreffing picture of thefe prifons, look for it from page 164 to page 172 of the firft volume of an eftimable work of Mr. de Warville, intituled, *Théorie des Loix Criminelles*, 1781; but at page 173, you will lament, that a man, who appears to be a fincere friend to juftice and humanity, has fo far fhunk from his principles in the confequences he draws, as to difplay a fort of toleration in favour of the confined ufe of Lettres de Cachet. Thefe are the expreffions of the author :

“What will they fay, even of thofe letters, *chef d'œuvre* of an
“ingenious tyranny, which overfet the privilege of every citizen,
“to be heard before he is condemned ; *which are thoufand times*
“*more dangerous for mankind than the invention of Phalaris, in-*
“*asmuch as they combine an impofing appearance of juftice with*
“*the moft odious illegality, whilst that punifhment at leaft was only*
“*the act of phrenzy of a mad monfter, fuch as nature does not vomit*
“*forth two in many centuries.* Let us return thanks to the en-
“lightened monarch, who governs at prefent the kingdom where
“this abufe has been multiplied to excefs ; he fees that every
“citizen ought to be heard, and condemned before he is punifh-
“ed ; that no law could deprive the citizen of that right ; and,
“if he has not yet extinguifhed this terrible lightning, it falls no
“more at leaft on any but thofe beings who difturb the repofe of
“fociety, and bear difhonour into the bofom of families.”

1. All the firft phrafe in italics, which by a fingular fympathy, no doubt, is to be found word for word in the *Effai fur le Despotifme*, printed in 1775 and 1776, (firft edition, pages 89 and 90 ; fecond Edition, page 97) the feeble outfet of a young man, who did not merit the honour of being copied by a writer who feels and expreffes himfelf well ; this phrafe has more energy than juftnefs ; for it is not true, that Lettres de Cachet have an *impofing appearance of juftice*. They have, in every fense, and under every point of view, a horrible appearance of iniquity : at moft might it be faid, *an impofing appearance of myfterious neceffity*.

2. I do not know why the French ought in that refpect to *return thanks to to their monarch*. If Lettres de Cachet are lefs frequent now than heretofore, *which is by no means proved*, or which is fo at moft in the affairs of individuals, the practice is not for that more fubject than formerly to regular forms. Mr. de Malesherbes wifhed to eftablifh thefe forms for Lettres de Cachet
obtain-

I do not know whether this painting be exaggerated, nor if it be true, as I am assured, that in France, in those hideous dens, the keepers never approach these unhappy men but under the guard of several dogs, like to that *infernal monster*, who, the poets say, *seated in his den, on a pile of bloody human bones, struck terror into the ghosts by his eternal barkings* (z). These atrocious precautions sufficiently prove what sort of treatment the barbarous goalers of houses of correction make their victims undergo (a). I shall not undertake to establish

obtained by families. This salutary modification did not survive his administration.

3. How has Mr. Warville acquired his knowledge that Lettres de Cachet fall only on those beings *who disturb the repose of society, and bear dishonour into the bosom of families*? No individual can penetrate into the secret of state prisons; and, besides, are not the laws sufficient to restrain those who trouble the repose of society? I think I have fully established that truth in the present work.

4. Why then assimilate domestic misfortunes with social delinquencies? Why then apply arbitrary force, that public scourge, which can and must devour the nation, as a remedy for private evils? We shall see in Chapter XIII. of this work whether this remedy be not very illusory. But I again repeat it; the question is not to appreciate the victims of arbitrary orders themselves. But what must be never lost sight of is the public ruin that flows from them, even in a given circumstance, where they produce an apparent good.

(z) *Ossa super recubans, centro semesa cruenta.*

Æneid. lib. VIII. v. 297.

Æternum latrans exsangues terreat umbras.

Ibid. l. VI. 401.

Did they who reproach the Spaniards with the horrible use they made of dogs against the Indians, know that the persons employed in the revenue farms made war thus against the smugglers of salt, and that it is not long since the mute evidence of their dogs was admitted in verbal processes?

(a) I know at least, (from having seen them) that the black cells of the *Bicêtre* are under ground, and without daylight; that the air is only changed by the fixed axis of a stone pillar, in the form

bliss here, that the height of atrocity, after violating the liberty of man, after reducing him to the despair of slavery, is to punish him for what he may have been induced to perpetrate, even with the greatest inhumanity for his deliverance; as if a wretched slave were not excluded from society, and out of the power of the laws that govern it, and which have proved themselves unable to protect him; as if nature and justice required that he should respect the life of him who does not respect the property of his person; as if the satellites, the instruments of oppression, were not as guilty in his eyes as the oppressor; as if every thing, I say EVERY THING, without exception, were not justifiable in a man to break his chains *. Learn, O ye! whoever ye be,

form of a syphon, and that water and bread are let down there by a rope. I have seen also the cage of *Mont St. Michael*; it is a separation made with simple bars of wood, in the roof of a cave; but as this cave is forty or fifty toises above the level of the sea, it is not so unhealthy as the prisons of *L'Inconfiance Portugaise*, which are below the level. No person had been in the cage of *Mont St. Michael* since the Dutch Gazetteer, who died there, except a man who had made either the piece of the *pretender*, or a copy of verses against Madame de Pompadour. He was a year in the cage, which is ten feet by eight. What made the Gazetteer of Holland suffer the most, as the prior told me, were the rats, which gnawed his gouty feet, which he could not stir. This miserable man was utterly unable to relieve himself. . . . O HUMAN BARBARITY!

* All Paris witnessed a scene of horror, the last year, on the subject of which there was only one opinion. The case is in point. Three young men, two of whom were of the *gens-d'armes*, consequently gentlemen by birth, remarkably handsome, well known in every public place of resort, and said by all their acquaintance to be of amiable dispositions, and guilty only of the intemperance of youth, were shut up by a *Lettre de Cachet* for these irregularities, none of which were criminal in the eye of the law. The despair, so well painted by Mr. de Mirabeau, led them to attempt their escape; in the attempt, a turnkey was wounded, and

be, who have two weights and two measures, who place all the duties in one scale, and all the rights in the other ; who traffic with morality, with justice, with liberty, with the human species ; who feign ignorance that it is often, very often, culpable to obey ; that the greatest outrage a man can commit against himself, and against his fellow-creatures, is to pay deference to orders, to a government, which, robbing him of the exercise of his will, of his opinion, of his conscience, may, in any instant, put crime in the catalogue of his duties : learn, that a despot, a goaler, and a merchant of slaves, are three beings devoted by nature and justice to the dagger of him whom they hold in chains, if he has the smallest hope of breaking them at that price.

I do not enter into these details, because they appertain to a question highly important, and almost entirely new, of the legitimacy of political resistance, active and passive, which I shall thoroughly discuss in another work, determining with precision

unfortunately died ; they, with the third young man, who was their fellow-prisoner, were tried, and executed, by breaking on the wheel, on the 5th of October, 1784, one after the other, and one of them exposed alive, with all his limbs broken, until death relieved him. Their demeanour and conduct were heroical, but not improper, nor in any way unsuitable to their unhappy situation : there was every reason to believe they would have made most valuable members of society : all Paris speaks of it at this day with horror, which is aggravated by the knowledge of the daily impunity of much greater criminals. The brother of one of these young men held a considerable place under government in Normandy, which the king has requested him to retain, contrary to the established rule, which dishonours and degrades the families of criminals. It is to be hoped, that the shocking incident of the murder of *his wife* by Mr. *d'Entrecasteaux*, president of the parliament at Aix, the last year, *both* of whom are near relations of Mr. *de Suffrein*, will contribute to abolish this senseless and barbarous custom. [T.]

cision its extent and limits. To return to the only prisons I am acquainted with, where it is said to be at least necessary to detain madmen, I can assert that the greatest part of the prisoners of state, whose heads are disordered, have only some fancies relative to their confinement. They imagine whimsical causes of it, overcharging them with fictions which border on delirium, and are very sensible in every other respect. A gentle, and wholesome regimen, exercise, and a little society would infallibly restore their heated imaginations. I saw at Manosque in Provence a monk who had alone the direction of a house of confinement, and cured madmen of that kind, provided their malady was not very inveterate. During a year that I observed this respectable man, who had nothing of his profession but the habit, six madmen fell into his hands, three of whom were obliged to be kept in chains: They all came from him good and peaceable citizens.

Mr. de Malesherbes, whose accession to the ministry made the *state goalers* turn pale, *Mr. de Malesherbes*, who can be reproached with nothing but the very pardonable error of a zealous patriot, who feels his powers, of imagining that he could effect any real and permanent good in a situation, the principles of which must for ever exclude it, since it was certain that he could not change the system of government respecting lettres de cachet, and that it would be a shameful inconsistency to see an arbitrary order countersigned *Malesherbes*: This respectable man, I say, who, the first of all our ministers perhaps, quitted his post from the dread of being compelled to concur in evil, visited the state prisons, with the project of breaking down their gates. The prisoners whose understanding he found disordered, or who were pointed

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ed out to him as such, were sent into houses where society, exercise, and such attention as he carefully prescribed, he said, would cure them. The method was excellent; but every reflecting reader will readily comprehend that this virtuous and enlightened minister had still another motive. He felt that he could never come at the true state of a man, but from the testimony of disinterested witnesses, and that of all the inventions possible for stifling the truth, serving intrigue, and exciting calumny, state prisons, properly so called, were the most perfect; and this is what I shall demonstrate by evidence in the second part of this work. Almost all those whose situation was improved by Mr. de Malherbes are at this day members of society. This is doubtless the most grateful recompense of their benefactor. It may console him for having accepted a place which, in honour to himself, perhaps he should not have occupied but under conditions which never would have been admitted. However that may be, his retreat affords a striking proof that it is impossible, I do not say to conciliate justice with the use of lettres de cachet, (that were impossible to the all-powerful deity himself, as long as he does not change the laws of nature, and make men perfect creatures) I say only, to diminish the iniquities of which they are the inexhaustible force.

I have advanced that I knew six forts which contained three hundred prisoners; and several religious houses habitually inclose in each of them as great a number of prisoners. Calculate by approximation how many men are buried in houses of correction and state prisons. There is not one of them, who, in the order, I will not say the possible, but in the natural order, might not have given to the state, to humanity, in the course of generations,

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an infinite number of citizens. To look upon the matter only as a calculator, one is almost frightened at the number of the ancestors of each individual in a small number of direct degrees (b), and consequently of the children that may descend from him. This calculation, which affords so striking a proof of the physical fraternity of men, is incontestible and simple. In the collateral degree it becomes almost incredible; and if it appears incompatible with the number of inhabitants on the earth, it must be observed, says Blackstone, that the marriages contracted between different descendants from the same father, unite perhaps a hundred thousand different modes of consanguinity; which does not, however, prevent the possible term of population from being unassignable, wheresoever men are free and happy. All the world, in short, will agree that one thousand marriages, according to

(b) Do minds unaccustomed to reflect, imagine that there is not one of us, but who at the twentieth generation, for example, has a million, forty-eight thousand, five hundred and seventy-six ancestors? A simple arithmetical calculation establishes this astonishing and well known truth in the doctrine of consanguinity. Every body may convince themselves of it by making a geometrical progression, the first term of which is 2, and which must always increase in a double ratio, since each of us has two ancestors, and that each of our ancestors owe their existence to two others. This progression, therefore, is $\div 2, 4, 8, 16, 32, 64, 128, 256, \&c.$ They who have no idea of the prodigious augmentation of numbers which double in increasing, have only to pursue this progression to the degree in which they wish to determine the number of their ancestors.

The calculation of the collateral degree far exceeds that of the direct gradation. The first term of the progression is only 1, but the second is 4, because there is a brother which makes with the father of him who calculates the two descendants of the first pair of ancestors. In the preceding progression, each couple of ancestors has two descendants, who augment in double ratio. In this latter they must augment in quadruple ratio. The progression

to the calculations the most generally adopted (c), must give, at least, four thousand children to the state. Now, there are *several thousands* of prisoners detained by lettres de cachet, some of whom are married, the others would be so: let that progression be pursued.

This reflection alone, perhaps, should suffice to inspire a horror for this sort of homicide, of which the ministers, their creatures, and their commis, daily render their master guilty, and which no longer excites astonishment in France: for if it be not clearly proved that the increase of population is to the advantage of a nation under absolute government, unless that population becoming excessive, force administration, as in China, to moderation, and to wisdom, it is not less true, that the multiplication of men is very substantial riches for princes, and that as they regard them as money for their use, they ought, at least, to learn to appreciate them. It is asserted, that the affair of Jansenism alone produced the exile or imprisonment of eighty thousand citizens (d). *An emperor* (e) who threw open the prisons, lamented to heaven that he could not open the tombs. *Cardinal Fleury* boasted,

tion therefore will be 1, $\div$ 4, 16, 64, 256, 1024, 4096, &c. and we shall find in pursuing it, that each man has, in the twentieth degree, or the twentieth generation, 274,877,906,944, or two hundred and seventy-four billions, eight hundred and seventy-seven millions, nine hundred and six thousand, nine hundred and forty-four ancestors.

(c) Mr. de Buffon has established, in his *Natural History*, (edit. in 12mo. vol. X. 1778, births, marriages, &c.) that each marriage produces about four children at Paris, and six in the provinces.

(d) See the eighth Supplement to the *Gazette of France*, vol. IV. *des efforts de la liberté, & du patriotisme contre le despotisme*, &c.

(e) Theodosius. See l'Essai sur les Eloges de Mr. Thomas, chap. XXII.

boasted, it is said, of having issued *forty thousand* lettres de cachet.

After a summary of facts so conclusive, and such simple reasoning, I cannot pass over in silence the answer made me by citizens of all ranks, by men of letters, nay, even by philosophers. A few detached particulars, say they, prove nothing for the general argument, and the statesman must view every thing in a great scale. It is begging the question, to reason on the supposition that the administration is, or will be, but little enlightened, and lettres de cachet unjustly decreed. You want to make us afraid of the most violent political robberies, and you furnish us with no other proof of this, than the detention of an inconsiderable number of men; (for the guilty ought not to be reckoned, since it behoves society to get rid of them). Consult our history, and you will see that our sovereigns have not essentially abused their power; that they have very rarely gone the length of tyranny, and that the genius of our court is not despotic. Arbitrary orders, in short, are sometimes unjust; but are arrêts *legally* pronounced always just? and must every thing be retrenched which is not without inconvenience? After all, it cannot be denied that the judicial power emanates from the sovereign. What signifies it whether he exercises it himself, or causes it to be exercised, provided justice be equitably and speedily administered? What matters it by what means good be produced, provided good be done?

The scrupulous and minute discussion of this objection, which I certainly did not invent, and which I have read and heard a hundred and a hun-

dred times (f), shall be the object of the ensuing chapter.

(f) I might cite a great number of works, some of which are in estimation, full of these fine adages. But the most entertaining I have read on the infallibility of arbitrary power, is, 1. the following passage of a huge volume, entitled, *Le Vau de la Nation*, published under the auspices of the GREAT MAUPEOU!! in 1772. "Every thing that resists a power which holds its right to the crown only from God, says the author, (1st part, p. 11 and 12,) ought to be retrenched, because all power established by divine right, is presumed to direct its views only to the greatest good, and that it is not given to other men to think and to see like the monarch, who neither can, nor ought to make known the powerful springs which actuate him. The motives which actuate him are always just; it is the principal character of monarchy: wisdom presides in the council of kings. It is the assembly of the just, where passions and intrigues are deadened, to make way for the good which the Sovereign, being present, imposes and prescribes in every heart." (Who would ever have dreamt, that the presence of the king deadened intrigues; and that his council was the *assembly of the Just*?) And 2. This other passage of a complaint which was addressed in the name of Louis XIII. in 1615, to the parliament, relating to some of their measures. *The king is major, according to the laws, although any other would be a minor at his age. God having heaped extraordinary graces on him, he must be presumed more virtuous than other men:* on which le Vassor, from whom this is taken, makes the following reflection: *They talk very great nonsense in the king's council as well as elsewhere.* Swift wrote to Pope with more wit and archness: *Either your brethren have miserably deceived us for an age past, or power confers virtue as naturally, and as surely, as your five sacraments confer grace.*

C H A P. XII.

A cursory view of our history from Philip le Bel to our days.

I HAVE proved in the preceding chapters, that it is impossible for an arbitrary administration to be constantly, nor even frequently equitable and enlightened, which must necessarily suppose in all the hierarchy of a ministry, a vigilance, a sagacity, an impossibility, a perfection, in short, which is not in man; and that if in that immense gradation of substitutes in the pay of authority, and which it is compelled to consult and to believe, there be found one single rogue, or even an ignorant person, injustice and error will be introduced through him, since it is under the necessity of seeing with his eyes. I have not therefore begged the question. It was certainly much easier to demonstrate these simple truths, by the positive results of administration, than by theoretic reasoning, nor do I propose to neglect either the one or the other of these proofs. Pollio said, *I do not write against him who can proscribe* (a). As for me, who, proscribed as I am, brave tyranny, because it cannot prolong life beyond the will; who will never finish my days in a land sullied by despotism; should I ever succeed in breaking my chains, I will not betray the cause of truth by concealing any part of it. The great

(a) *At ego taceo: non est enim facile in eum scribere qui potest proscribere.* (Macr. scet. li.)

great have venal pens enough ready to trace out the panegyric of their designs, and the apology of their actions : let us write for liberty, for honour, for our country ; and let *us vulgar men* sometimes reflect, that *Socrates owed his grandeur to the hemlock* (b).

The French have lost their constitution, which it was easy, since the restoration of knowledge, to have carried to such a degree of perfection as is consistent with the works of man, by their want of reflection, their ignorance, and by that *monarchical fanaticism*, so to speak, which has made them unfrequently congratulate themselves on their misfortunes. They begin too late to be cured of their fatal prejudices ; yet, there are authors amongst them who assert, *that despotism can never bud in France*. (I repeat the consecrated expression). These common-place sayings pass into principles, because the bulk of mankind take them on their word, whilst they who are capable of examining will not risk any dangerous discussions, or take special care, at least, not to publish their opinions. *The sublime Manifesto of the united States of America*, has been generally applauded. God forbid that I should protest, in that respect against the public voice, I, who were I not in irons, would go and instruct myself amongst them, and fight for them ; but *I ask if the powers who have formed alliances with them, have dared to read that Manifesto, or to interrogate their consciences after perusal ?* I ask, whether there be at this day one government

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(b) Sen. Epist. 13. Those hireling historiographers think otherwise, of whom a worthy French writer said : *Quid expectari ab istius modi genere hominum debeat, qui mercede conducti, scripserunt, tu ipse judica ridiculi in eo sunt & principes et mercenarii illi scriptores : illo enim ipse titulo profitentur se ad mendacia coemptos.* (Bongars. lett à Camerar. 155.)

in Europe, the Helvetic (c), and Batavian confederations, and the British isles excepted, which, judged after the principles of the Declaration of Congress, of the 4th of July, 1776, is not devested of its rights? I ask, whether of the thirty-two princes of the third race of our kings, there be not above two thirds who have been much more guilty towards their subjects, than the kings of Great Britain towards the English colonies?

Unquestionably, we have only to open our annals, defective as they are, to perceive that there are no sovereigns, who, with a more remote beginning, have marched to despotism with more hasty strides, and with less moderation than the French monarchs, and that the history of no country affords a longer series of bad kings than our own. The details, and the necessary reflections, in order to developé this truth, and to point out from the time of Louis le Gros, the uninterrupted usurpations which have conducted us from anarchy to arbitrary power, are very numerous, and belong to another work; but without remounting so high, let us take a cursory view of our annals since the reigns of the Valois, those reigns, all of which were so fatal and tyrannical, excepting that of Charles V. a prince formed by the hands of experience and adversity, truly wise and able, though
far

(c) We cannot avoid remarking on this, and especially on note (d) of Chap. VII. that the author appears always to have considered the modern Swifs as he would have done those of the fifteenth century. But in the fifteenth century the Swifs did not conspire against their allies, and the plains of Morat were dyed with the generous blood with which they purchased their liberty, and not stained with despotic, and even tyrannical rescripts, which in our days they have not blushed to date from thence. O Swifs! Nation heretofore so respectable, and respected! why do you yourselves write in such fatal characters your own sentence of proscription? The ambitious smile, and philosophers lament over your blindness. (*Note of the Editors.*)

far from being irreproachable (d); and that of Louis XII. whose political errors were atoned for by amiable virtues. Let us descend from that epocha, wherein our kings possessed power enough to be accountable for the misfortunes of their people to our own days, wherein they have nothing to fear but the excess and abuse of their authority; and cast a rapid glance on the history of those princes, whose moderation is so much boasted.

I find in the first place the excessive dissipations, the atrocious exactions, the inflexible rigour of *Philip le Bel*, a prince devoid of faith, insatiable of power and money, cruel, and vindictive, who violated all the rights of the nation and of individuals (e); who forced to an almost general revolt,

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every

(d) I shall only remark on this subject a trait of imprudence of the president Henault; similar examples of which are not rare in his *Abrégé Chronologique*. He says, (tom. I. page 345, edit. in 12mo. Paris, 1768.) *Charles V. having found at the death of his father the treasury exhausted, repaired the finances: his troops were well paid; he gained the neighbouring princes; he built more than any of his predecessors, and he laid no imposts.* Every body knows, that Jean de la Grange, Cardinal, and Bishop Amiens, prime minister of Charles V. was a pitiless extortioner, and that Charles V. pushed his imposts to an excessive degree, towards the end of his reign, without any necessity. He left his people rich indeed, and that will always be the case under economical and steady princes; but his treasury, which contained at his death twenty-seven effective millions in bars of silver, (near three hundred millions of actual money) became fatal to the nation under the reign of his son. We know that Charles V. began the Bastille in 1369; but I do not presume that he destined it to the only use which has been made of it by his successors.

(e) Philip le Bel was the first king who assumed the right of selling letters of noblesse, and of creating peerages; of changing the coin, and even of an exclusive coinage; of imposing taxes by his own authority, &c. &c. We know with what injustice he treated the Italian bankers, and how many respectable merchants and other citizens, who had no other crime than their riches, were involved in these exactions. Nobody is ignorant of the catastrophe of the Templars; the perfidious detention of the Count of Flanders,

every order, and all parties of the state : and whom a premature death alone could save from that abyss of misfortunes and humiliations, that his faults and his crimes had hollowed under his throne.

His son, during a momentary reign, shewed himself the heir of his avarice (f). Wholly taken
up

ders, and his sons, &c. &c. Philip le Bel imposed a duty of an hundredth, then of a fiftieth on all merchandize, and another fiftieth on all moveable and immoveable property, as well belonging to ecclesiastics as to the laity. To form an idea of his pecuniary exactions, and in general of the progress of the fiscal science, it must be observed, that Philip Auguste, grandfather of St. Louis, had no more than 3600 marks of silver, at 50 sols the mark, for his revenue. Philip le Bel made his amount to more than 80,000, at a hundred sols the mark, which he carried even to eight livres. Almost all the provinces of the kingdom associated together at the end of his reign, to oppose his tyranny. There exist at this day various original charters of these associations.

(f) In the treasury of Charters, we meet with the instructions given by Louis Hutin to the commissioners he sent to pacify the provinces : there is no mention made in them, says Boulainvilliers, either of the inquiries which had been promised, nor of informations on the conduct of the officers ; every thing relates to the manner of conducting themselves to get hold of money. There are in them these remarkable words : “ You must be diligent in seeking loans from great folks, whether prelates or laymen, according to what you know their abilities to be, and give them a fair promise of being paid without failure, for the king gives you order to do this, and by this, they shall be free from going to the army, (*aller à l’ost* ; and if there be any who will not do it, and you know that they are not easy, do not constrain them moderately (*mi droitement*), but constrain them to come to the army, or to make so much expence for the army as the preparations would have cost them, (*ou à faire si grande finance pour l’ost qui vaille le prest*) or about what you can ; and these instructions you will shew to nobody, but keep them secret ; and in all things necessary for you to do, be so prudent, so sly, so circumspect, that you do them without slander of the people, for it is the intencion of the king and his counsel. *Item*, also you will constrain the cities, the communities, and universities, to shew what they have, that they may be more ready to provide finances. (*à faire montre pour*
“ *qu’ils*

up in gratifying that vile passion, he sacrificed to it engagements, promises, rights, honour, justice, and flattered his wretched people with a false and delusive liberty.

Philip le Long, more able and better intentioned, did not however abandon the arbitrary systems of his predecessors (g). He prostitutes the magistracy, by continuing the shameful commerce of the venality of employments : he attempts to establish impositions, on his own authority, relinquishes his project only from the dread of a general defection, and lives too short a time to alleviate the evils under which France was labouring ; that country, says Bolingbroke, which requires only a supportable government to be rich and happy, so much has nature done for her.

Charles le Bel tramples his people under foot as much as his father and his brother (h), and perishes, after a reign of four years, which merits very little regret. Providence, says Mezerai, did not permit the posterity of him who had plundered France by exactions and violences unheard-of before his reign, to reach the age of manhood.

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" qu'ils soient sur prêts à faire finance."—(*Lettres sur les Anciens Parlem. de France*, in fol. p. 86, lett. VIII.) Louis Hutin forced the inhabitants of the country to purchase letters of enfranchisement.

(g) He assumed the power of making new nobles, of creating fresh peerages ; he took from all the seigneurs the right of coining money, &c. Every body knows with what partiality he caused Mahault d'Artois to gain her process against her nephew Robert, contrary to all the rules of our public right, a process, whose consequences were so fatal to France.

(h) A single anecdote will prove what vexations were carried on against the people. During the regency of Philip de Valois, the states ordered the trial of Pierre Remy, Sieur de Montigny, successor of Marigny, and of la Guette. His sentence decreed the confiscation of his goods, which amounted to 1,200,000 livres of that time.

In the obdurate, and grasping, and violent, and despotic *Philip VI.* were united all the basest vices of the Valois. A false coiner, an insatiable publican, he let loose upon his subjects all the innumerable calamities engendered of the new born hydra of the Exchequer. I remark under his reign the disastrous murder of fourteen gentlemen of Normandy come to Paris on the invitation of the king, under the public faith, and beheaded without any form of justice (i).

The punishment of the *Compte d'Eu*, executed without trial or judgment; the confiscation of his estates, divided amongst his favourites; the perfidious detention of the king of Navarre, and the massacre of his friends, have fixed an indelible stain on the reign of *John*, the most passionate, the most arbitrary, the most imprudent of men (k),
who

(i) He had requested them to be present at the tournament given on occasion of the marriage of the Duke of Orleans, his second son, in 1344. The Sires de Malestroit, and his son, d'Auvangourt, de la Roche-Resson, *Henry de Persy*, Guillaume Baron, Olivier de Clisson, father of the constable, were amongst the number of these unfortunate men. To give an idea of the fiscal manœuvres of Philip de Valois, and of his principles, it is only necessary to report the precise terms of his ordinance of the month of April, 1350, to the officers of the mint at Paris. "Make the merchants and changers alloy the bullion at two penny-weights, six grains, lawful, that they may not perceive the alloy; and it is forbid to all cutters, and other officers to reveal this fact; but to keep it secret, and *swear it upon the holy Evangelists.*" And in another place, "Let the merchants know the course of the mark of gold in such a manner, that they may not perceive the alloy, and that there is a change of currency."

(k) 1355. The king of Navarre was dining at the castle of Rouen, with the Duke of Normandy, whom he had invited to be present at his reception. The king appears, arrests him and his friends, and strikes off the heads of the *Compte d'Harcourt*, the *Seigneur de Graville*, the *Seigneur Maubué de Mennemares*, and of *Olivier Doublet*, Esq. without formality of justice. This horrible violence made the whole province of Normandy revolt,
who

who overwhelmed France with evils, and covered her with disgrace.

Madness, cupidity, ambition, ferociousness, in a few moments destroy what the wisdom and perseverance of *Charles V.* had been able to effect. The kingdom is for forty years a prey to the most dreadful sufferings; from thence dates the horrid practice of judging by commissioners, hateful satellites of despotism, who never found any man innocent who was accused by the minister: then liberty is oppressed even in the sanctuary of justice by manœuvres of authority, till then unknown (1),
but

who called in the English. Five months after they gained the battle of Poitiers, where *John* was taken prisoner. Henault finds that *this action* (of Rouen) *would have the air of perfidy, had not the King been informed that the King of Navarre was in treaty with the English,* (tome I. p. 322.) The worthy and faithful historian! The mark of silver under this reign rose to 14 liv. 12s. the 14th Feb. 1351, and the 27th of the following month, it was reduced to 5 liv. 6s — It remounted shortly after, and the 2d August, 1353, it was at 13 liv. 17s. The 7th September, 1354, it was at 12 liv. and the 29th November, of the same year, it was reduced to 4 liv. 4s. He then raised it to 18 liv. Never had the money undergone such changes; and this prince, whose good faith is so much boasted, said in one of his ordinances of the 24th of May, 1350-51, addressed to the officers of the Mint of Paris; “On the oath you have taken to the king, keep this matter secret the best you can; the master, he or they who are established by him to alloy, the founders, cutters, and assayers of the said Mint, that neither by you, nor by any of them, the changers, nor others, may perceive any the least matter concerning it.” And in an ordinance of September, 1351; “If you have any royals for one day, make them be worked and moneyed into coins of the preceding dies, to the end that the merchants may not perceive the abasement; assure them, however, that they shall have 62 of the said crowns to a mark. Keep this dear to you, as you have your honours, that they may not know the alloy from you, under pain of being declared traitors; for if it be known through you, you shall be punished in such a manner as to serve as an example to others.”

(1) It was in 1413, under the faction of Burgundy, that beds of justice were begun to be made use of, to impose silence, as at
this

but since so multiplied ; then *Charles VI.* disinherits his son in favour of the enemy of the French ; and *had they foreseen the passive obedience required from them at this day, the blood of the royal house would have been for ever excluded from the throne.*

As the reward of the fidelity of this generous nation, that *Charles VII.* whose memory we revere as if it were for us, and without us that he reconquered the kingdom, *Charles VII.* under the pretext (m) of the turbulent circumstances by which it was agitated, strikes a mortal blow at our liberties: the national right of taxing itself is now only an

this day, on liberty, and the laws. Edicts were published without inquiry or deliberation, which edicts were *afterwards annulled ; on the report of the Chancellor, that they had been published without due authority, and observance of form, without making them known, and reading them to the king, neither in his council, nor being advised in the court of Parliament, but suddenly and hastily, and having been previously kept close and sealed, (auparavant tenus clos & scellés.)* [Du Tillet des rangs.]

(m) I say, *pretext* ; for the English who had exhausted themselves for four hundred years under the Normans, and the Plantagenets, by carrying their arms into France, were tempted only by the hope of pillage, and excited by national hatred. The hope of conquering it was too absurd before the incredible events of the reign of *Charles VI.* and became infinitely more so after the ill success of *Henry VI.* France ought therefore to have been more tranquil thenceforth than it had ever been. . . . Does the reader wish to form some idea of what the defence of *Charles VII.* cost us, independently of the horrors of war, and the ravages of the two parties ? *Le Blanc* has proved, in his treatise on the coin, that not only *Charles VII.* the Dauphin, augmented the price of gold and silver as far as 90 liv. in one specie, and 73 liv. 10s. in the other ; but that in converting them into money, he carried them to so great a value, that he gained 270 livres profit on the mark of silver, and 2527 on the mark of gold. At the same period there were paid for the household of *Charles VI.* 7000 marks of gold, (that of *Charles V.* of his wife and children, was fixed at 500 marks), yet *Charles VI.* wanted necessaries. At length the king of England imposed taxes arbitrarily, under the form of loans, and established besides *les aides*, &c. &c.

an illusion; regular and standing troops paid in money, which is sufficient to render them the artizans of the most terrible despotism; standing troops, I say, menace and enslave a people, whose chiefs were corrupted, that they might be burthened at discretion (n).

Thus was the way paved for the tyranny of Louis XI. an unnatural son, a bad father, a barbarous brother, an ungrateful master, a dangerous friend, an implacable and perfidious enemy; *a prince full of artifice, cruel, devoid of sensibility, a stranger to every principle of justice, without any idea of decency; who disdained all those restraints which the sentiment of honour, or the desire of glory impose even on the ambitious* (o); who took a delight in inventing new and lingering punishments, the better to torment those he hated, and above all the nobles; who made of the executioner *Tristan* his dearest favourite, his most trusty satellite, informer, witness, judge, and murderer of his victims.

Charles VIII. without talents, and without virtues, immolates his subjects with all the presumption, the precipitation, and the wantonness of ignorance, to the pretensions he had on the kingdom of

(n) "Charles VII. gained, says Comines, (Mem. l. VI. c. 7.) "and was the first who began this point of the imposition of *Tailles*, "at his pleasure, and without the consent of the states of his "kingdom. . . . And to this the seigneurs consented, *for certain* "*pensions* which were promised them for what should be levied "on their estates. . . . Had this king, adds the wise Comines, "lived always, and they who were then with him in his council, "he would have been well advanced at this hour; but to what "has happened since, and will happen, he loaded sorely his soul, "and those of his successors, and put a cruel wound upon his "kingdom, which will long time bleed, and a terrible band of "armed folks in pay, which he instituted in the guise of the "Seigneurs of Italy."

(o) *Robertson's* Introd. to *the History of Charles V.* p. 183, of the *Paris edit.* in 12mo, 1775.

of Naples from the house of Anjou. Under his reign commence those unfortunate wars of Italy, which have given the most fatal blow to French liberty, and even to the liberty of all Europe, by rendering necessary the practice of regular troops, the various expedients of finance, and the illegal and unbounded augmentation of the royal revenues.

Louis XII. not a very enlightened father of his people, but truly good, the invariable friend of justice, simple in his manners, æconomical from taste and from principle, respects the laws, and his subjects (p): his virtues supplied the talents that he wanted. Destitute of sagacity and of foresight, the uprightness of his intentions atoned for or repaired these defects; he merited the love of his subjects, the esteem and confidence even of his enemies: (q) his wars are ill conducted, but little burthenfome to his people; (for he did not confound his *patrimony* and his *kingdom*), his treaties
of

(p) "He has shewn such deference, says Seyssel, (*Hist. de Louis XII*) to the authority of his sovereign courts, and of his justice, that whatever they determined never was reversed, whether in his own causes, or those of his subjects, he has never required nor pressed them for his affairs." And in another place, "He has never caused to be punished, nor persecuted, any person in body, nor in goods, otherwise than by form of justice, and knowledge of the judges." S. Gelais gives the same testimony in his favour, and says, "He suffered no man to die by sudden justice, in any manner whatsoever, whatever crime he may have perpetrated, *were it even against himself*; but willed that all crimes should be punished by his ordinary judges, and in following in that the order of right, and of reason, without making use in any thing of his will." (*Hist. de Louis XII.*) See note (I.) at the end of this work, the ordinance he issued at his accession to the throne.

(q) Frederick, king of Naples, in 1501, sought an asylum with his vanquisher, rather than amongst the Spaniards, his relations.

of peace not very honourable, but preferable to the evils resulting from the abuse of resources: he sells the employments of France, and that is a great error (r); but he reduces the imposts one half, and that is a great benefit: his heart told him what wit and genius have not taught so many others, not even Charles V. that a king is never rich but inasmuch as his people are so, and that the less the people are burthened, the more have they the power of enriching their country and their prince. Louis XII. subsisted himself and his court, which was always frugal, and not numerous, on the revenues of his domain: his friend was not a great man, but upon the whole he was a good citizen: and the French, happier under the administration of these two patriots than under that of their most celebrated kings, Charlemagne and Henry IV. excepted, ought to cherish their memory, and for ever remember that justice and humanity are the first and the most useful virtues of statesmen and of monarchs.

The ruinous prodigalities of *Francis I.* (s) his unskillfulness, his arbitrary and sometimes barbarous transports, bring France upon the brink of ruin; and to expiate so many faults, he only governs it with the more severity. He first straightens the liberty of the press, the commerce of human thoughts, so precious a resource for every upright

(r) But it was the error of a good king. Louis XII. wished to get possession of the duchy of Milan, on which he had indisputable claims; but he did not wish the conquest of his patrimony to be burthensome to France; he raised no subsidies, and invented the dangerous, but not guilty resource of the sale of the offices of finance.

(s) I know that Francis I. paid all his debts, and left in his coffers 400,000 crowns of gold, besides the receipt of a quarter's revenues; but he did not the less ruin his people during his whole life.

upright administrator ; he restrains that public censure, so useful, that Louis XII. permitted it to extend even to his person : He arrogates to himself the right of disposing of the sacerdotal dignities, a liberty not unheard of, but always criminal, and tending rapidly to despotism ; he negotiates this traffic with the Bishop of Rome, who, though himself elected by his brethren, ravished the rights of election of prelates from those who held it by the decrees of the church, and betraying it by this unworthy prevarication, dared to barter a right which he never had. This inconsiderate prince, in short, opens out that frightful scene of atrocities, by which fanaticism has incessantly imbrued our country with a blood for a whole century. The unbridled corruption of his court changes for ever the manners of the French, and perhaps their national character ; for the monarch who encourages the depravity of the citizens, who destroys the public integrity by a concealed seduction, by underhand practices, or scandalous examples, is more to be feared than him who strikes every thing which stands in his way, with the sword : Violence is dreaded and perceived by all, and if the nation against whom it be exerted, has yet some energy, corruption is a certain method of enslaving it, and more efficacious, as it is contagious for the general mass of men, and unravelled but by a very inconsiderable number ; it was therefore one of the principal springs of the *Italian administration*, which, soon after filled the measure of our woes.

Henry II. attaining the throne by a crime (t), of which

(t) The death of the Dauphin Francis, poisoned by the Count de Monte-Cuculo (1536,) at the instigation probably, of Catherine de Medicis. We know also that the favourites of the Dauphin Henry were accused of the death of the conqueror of Cerisoles, Duc d'Enguien, and their impunity does not leave the memory of Henry well justified. (De Thou sur l'an 1546.)

which he was perhaps ignorant, delivers over his subjects to the public farmers, to favourites, to persecutors, and gives the signal of civil and religious wars (u). Born with some talents, crowned already by success, but subjugated by a shameful weakness, he enchains the French at the feet of an intriguing woman, and sacrifices to a ridiculous passion, his honour, his interests, his nation and his glory. But this said period is soon effaced by more terrible calamities.

Francis II. an unhappy child, feeble of body and of mind, reigns and dies in the space of seventeen months. In this short interval the hatred and unbridled ambition of a minister exercise the most complete tyranny over France. The king cannot pay his debts: The *Cardinal de Lorraine* forbids every person, UNDER PAIN OF DEATH, to solicit payment of them, and reserves to his party the treasures of the state (x): he publishes the most atrocious laws against the Protestants, and carries them rigorously into execution: he strives to establish his despotism on the gloomy terror of religious persecutions, and to perpetuate them in France by making it receive the inquisition (y): he corrupts

(u) From 1549, the edict which enjoins the royal judges to proceed severely against innovators; but to remit the judgment to the Bishops; that is to say, that under a fallacious appearance of mildness, the parties were rendered judges in matters of heresy. The execution of Anne Du Bourg is the true epocha of the implacable hatred between sectaries and Catholics.

(x) All the imposts were raised at the same time, and the loans were carried to 40 millions, which make more than 150 of the present day.

(y) It was *l'Hopital* who saved us from this dreadful scourge; *this great, this very great man*, in consequence persecuted by the Guises, Philip II. and the clergy, was so declaredly by the court of Rome. The Pope went so far as to offer Catherine de Medicis the permission to alienate church property to the amount of one hundred

rupts the magistrates, and turns the balance of justice as it suits his vengeance : he sacrifices by thousands the citizens whom he hates or fears (z), and causes them to perish on the scaffold, and in prisons, in the midst of tortures : he makes an attempt on the blood royal, and not being able to extort from a young and timid prince the signal for a murder, he dares to consign two princes of the blood to be judged and condemned by commissioners, who soon after declare *that they have neither seen nor heard any charge against them* (a) : the arret of their death is prepared and perhaps signed : the audacious minister at length menaces openly the throne, on which he strives to place his brother . . . Worthy fruit, which whose blind despots do always, and always will, gather, if not in their own persons, at least in those of their posterity, who do not see that between them and their visirs there is only their people !

Charles IX. came to the throne, and this infernal monster executes at his entrance into manhood what (b) Caligula only had desired : he meditates with the most profound wickedness the most abominable perfidy : he sullies France with an eternal crime : HE EXTERMINATES AT ONE BLOW ONE HUNDRED THOUSAND OF HIS SUBJECTS, in the number of whom fell one of our greatest men,

hundred thousand crowns, if she would cause Montluc and l'Hopital to be arrested.

(z) See the history of the enterprize of Amboise, so improperly called *a conspiracy*, and which was no other than the effort of honest and courageous patriots in favour of *the Bourbon*.

(a) See the commentaries printed in 1566, *de l'état de la religion et république sous les Rois Henri & François II. et Charles IX. par Pierre de la Place, Président de la Cour des Monnoies à Paris, pages 174 & seq. Mem de Condé.*

(b) Charles IX. died at the age of 23 years 11 months and 3 days.

men, the only man perhaps who has ever laboured in earnest to give us a free constitution (c) ; and *Charles XI.* has been praised during his life, and after his death !—And the ministers of religion, and orators (d) celebrated his goodness !!..... O men! since you are so base, there is some merit in serving you !

Henry III. indolent and corrupt, the slave of his unworthy favourites, delivered over to the perfidious counsels of his mother, whom one cannot name without horror, who, to retain and secure her power, fomented all the divisions of France, made an open commerce of debaucheries and treasons, and precipitated her son into the abyss : *Henry III.* teaches us that a weak prince is the worst of kings, and that a *Sardanapalus* can do as much harm as a *Nero*. Reduced to the most critical situation by the senseless and barbarous policy

(c) The Admiral de Coligny.

(d) “ In 1571, that is, a few months after the massacre of St. Bartholomew, was pronounced and published a panegyric in honour of Charles IX. The great actions of a prince of twenty years old are there boasted, who had as yet been able only to lend his name to the misfortunes of his reign. They there celebrate his goodness, and at what a moment ! At his death orators were found to praise him. I have read the funeral oration of this prince, which Muret pronounced at Rome in presence of Pope Gregory XIII. No, when Antonine and Trajan died in former times in the same city, and when the public grief pronounced their elogium in presence of citizens whose delight they had been for twenty years, I am very sure that there was not more mention made of virtue, of justice, of the tears and despair of the people. Every eulogium pronounced at Paris, or in France, in honour of Charles IX. is in the same tone, with this only difference, that our French orators insulted humanity in feeble and barbarous prose, in that jargon which was not yet a language, whereas the orator of Italy, writing with purity in the language of ancient Rome, his falsehoods at least are soft and harmonious.” (*Essai sur les eloges de Mr. Thomas, c. XX.*)

cy of his predecessors, he still adds to his embarrassments, by enveloping himself in despicable stratagems, and dangerous intrigues. By a capital and fatal error, he strove to deceive the two parties which distracted France, then to destroy one by declaring decidedly for the other. This Italian craft augmented their strength, by exasperating them both. The one assumed the authority of doing every thing, because they knew themselves to be feared and protected: the other dared every thing, because they reckoned only on themselves for their defence. Henry lost his tranquillity, his reputation, his honour, his power, and his life, for want of the skill and the courage necessary to curb two factions equally dangerous, or from not remaining neuter between them, and keeping them both in awe: a great and formidable lesson! which teaches all kings that when they once have blown up the sparks of fanaticism, they are no longer able to command the conflagration; that they are nothing when they cease to be THE MEN OF THEIR PEOPLE, and above all, that they never set the example of violence with impunity! for in vain does the tyrant multiply his proscriptions, and his executioners: HE BY WHOSE HAND HE FALLS ESCAPES HIS FURY.

France revives under a king, a gentleman, formed in the school of misfortune, accustomed to appreciate and to respect men, because he had long stood in need of them, and had experienced all the vicissitudes of fortune; because he knew and cherished the faithful nation to whom he owed every thing, and that his great soul, capable of gratitude, was not so of the deliriums of despotism and cupidity; he found his people rent by forty years civil war; the debtor of all Europe, overburthened with a multitude of gifts and pensions,
with

with which it had been necessary to purchase the submission of the factious, and pay the obedience and the services of faithful subjects; exhausted by contractors, favourites, annuitants, in a word, crushed by a debt of three hundred and thirty-three millions (e), (one hundred millions of the revenue of the royal domains had been alienated. The expences of the collection and the plundering were such, that for *one hundred and fifty millions* levied, the king received only *thirty*.) (f) Well! this prince, as good a statesman as he was a magnanimous warrior, this prince aided by *Sully*, in less than fifteen years, carried his state to the highest pitch of prosperity it had ever attained; he diminishes *les tailles* eight millions; he reduces the internal duties near one half; the extraordinary and forced expenditures absorb thirty-eight millions; all his debts are paid: the kingdom is embellished by public monuments, enriched by canals and highways, defended by strong places: he attempts to create a marine: the arsenal is augmented with one hundred pieces of artillery, with all sorts of ammunition, with arms for twenty thousand men: the revenues of the prince increase, and he finds in his coffers more than forty-five millions France! Behold thy resources. France! See what thou hast a right to demand of thy kings: See what has been done: See what may be still effected, even without the talents of HENRY THE GREAT, (who after all, had much more soul than genius;) for the nation is better informed, more docile, and circumstances less unfavourable. But the monarch who thus administered did not look to despotism: he consulted, he listened, he saw: he knew his duties.

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(e) Silver was at 22 liv. the mark.

(f) *Mem. de Sully*, ann. 1598, edit. de 1752, p. 296.

as well as his rights : he respected the laws : he cherished his people : and his friend, his principal minister, was Sully ; Sully, grown old in camps and not in courts ; ripened, and not enervated by age ; Sully, lofty, austere, inflexible, inexorable to courtiers ; but the friend of the labourer, and the defender of the oppressed ; a citizen before he was a subject ; a patriot before he was a minister, great by his talents, still greater by his virtues Yet was he fifteen times menaced with disgrace : yet was he incessantly besieged by a crowd of money edicts (*edits burseaux*) extorted by people of the court and mistresses And nevertheless where find a Henry ? Will one be born upon the throne ? Never : Never : It is not there they are formed.—Where find a *second Sully* ?—Who other than a *Henry* would support him ? Blind Frenchmen ! Should one of these courageous and truly great men appear, who knew to dare every thing to save you, you would league together against him : you would applaud his disgrace * Alas ! the fanaticism which tore from us our father and our restorer from the first beam of the fair day that gave him birth, has it then irrevocably devoted us to the excesses of arbitrary power !

The destructive manœuvres of the *sanguinary Richelieu* wounded France to the heart, by extending, by consolidating, and above all, by preparing the reign of ministerial and fiscal oppression ; by degrading the nation by terror ; by debasing the great by corruption : by perfecting arbitrary systems, and placing them within the reach of the most cowardly and most impertinent robbers ; by introducing that insidious and shuffling policy, be-

come,

* The allusion here is evidently to Mr. Neckar.

come, *per excellentiam*, the science of the court. Wicked citizen, immoderately ambitious man, who destroyed every thing, and created nothing but a fallacious renown, exaggerated by adulation, by ignorance, and servility, and which, unveiled by time and by philosophy, devotes to the execration of patriots, and sages, the parricide oppressor of his country (g).

Lewis XIV. in the course of too long a reign, by outrages of every kind, puts the last hand to the work of despotism. A haughty sultan, who never knew any other rule than his will, and dared to erect it into law (h); who ruled his people by *Lettres de Cachet*, and made them fly beyond the seas; who combined with the follies of arbitrary power the furies of intolerance, and forbid, under pain of the galleys, and of confiscation, his subjects, Frenchmen, men, in short, to leave the kingdom, whilst he was torturing a million of them with the sword of fanaticism; (a new Saint Bartholomew, almost as odious, and a hundred times more fatal than the former, which delivered over three millions more of sectaries to the outrages of his janissaries); (i), *who wished to compel*

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a free

(g) *Unus hominum ad hoc ævi magni (felicitis) sibi cognomen asseruit, civili nempe sanguine, ac patriæ oppugnatione adoptatum, &c. (Plin. hist. nat. 7. 43.)*

(h) Edit. de 1705. (See what I have said of them, chap. I. p. 38, 39. and 40. Edit. de 1667;) the third article of which wills, that if there arises any difficulty in the judgment of a process on the execution of any points of ordinance, the parliaments should recur to the king to learn what is his intention. Declaration of 1673, which interdicts all opposition of individuals to the registering of edicts, letters patents, &c. and, over and above, the use of remonstrances, or, what comes to the same thing, if it be not that derision is added to tyranny, which does not allow it till *after* the pure and simple registering.

(i) Nobody is ignorant, that the kind of war which resulted from this religious fury cost the kingdom near one hundred thousand

a free people to take back a tyrant(k), who sacrificed twenty million of men to what they do not blush to call HIS GLORY, and took this senseless motto, SEUL CONTRE TOUS, ALONÉ AGAINST ALL. Un-pitying extortioner, who devoted his nation to all the fiscal horrors occasioned by fifty years battles; who crushed it with his ostentation, and involved it for ever, still less from the enormous quantity of imposts, than from their pernicious form, and the unskillfulness of his administration (l); who the first established by authority direct impositions (m) and loaded the state in twenty years with fifteen hundred millions of annuities; (*rentes*) (n), who gave the example of these money-edicts, since multiplied under so many forms, and collected a crowd of insatiable farmers, become necessary from their very robberies, and who can give the law to the despot: foolish administrator, who sacrificed the natural, and, almost, incalculable riches of his country to the ruinous illusions of mercantile interests,

sand men, of whom *ten thousand* perished by the cord, on the wheel, or by the flames, under the administration of the intendant Beville, *the Torquemada of France*.

(k) *Is it not being the image of the Almighty, said Madame de Sevigné, to support a king expelled, betrayed and abandoned?* (Lett. LII. tome VII.) No, IT IS A BETTER IMITATION OF DIVINE JUSTICE TO PUNISH A FANATIC, AND TO EXPEL A DESPOT.

(l) Bois Guilbert, in his *Détail de la France*, printed in 1699, makes it appear, that the revenues of the *bien fonds*, which were at 700 millions, (1400 of the present day) had diminished one half from 1660 to 1669; not so much, says he, from the quantity of impositions as from their evil form. The general imposition amounted to more than 750 millions, which produced to the royal treasury only 250 millions. (See Mem. pour servir à l'Histoire Generale des Finances.)

(m) The capitation and the tenth.

(n) In the actual proportions of silver with those of property; 500 millions of that time being equivalent to 900 millions *poids de marc*.

terests, totally forgetting the true employ of commerce and of money, and the simplest notions of natural order (o); who encouraged the most destructive luxury, that of decoration, and the traffic of money, which ruins agriculture, corrupts the manners, and escapes taxation; who had constantly recourse to usury (p), to changes in the coin, to forced reductions of interest, to alienations of the domain, to every imaginable extortion, to engagements impossible to be observed, to the most violent and the most ruinous expedients. Blind dissipater, who created for two millions of employments (q), a terrible impost, under a ridiculous disguise,

(o) Thus the countryman was ruined to provide for the manufacturer.

(p) "The discredit became universal; bankruptcies multiplied; money disappeared; commerce was at an end; consumption diminished; the culture of the earth was neglected; workmen passed into foreign countries; the people had neither food nor clothing; the noblesse made war without appointments, and mortgaged their possessions; all orders of the state, crushed under the load of taxes, were in want of necessaries; the royal paper was in the lowest state of abasement; the contracts on the Hotel de Ville sold for the half of their value, and the *billets d'assignats* were at 80 or 90 per cent. discount. Notwithstanding the reduction of six hundred millions of paper, payable to the bearer, to 250 millions of state bills, the national debt amounted, after his death, to 2062 millions, 138 thousand and one livre, at 28 livres the mark; the interest of which, at 25 deniers, amounted to 89 millions, 983 thousand 453 livres." (*Histoire Phil. & Pol. du Commerce des deux Indes*, t. II. p. 57. edit. in 8vo. Mæstricht.) I cannot conceive how Lewis XIV. dared to throw his eyes on the picture in the gallery of Versailles, with this inscription, *Order restored in the finances*, (*l'ordre rétabli dans les finances.*)

(q) Six hundred millions making 1100 millions *poids de marc*, and 2000 millions of real value. It is not to day only that this almost incurable, and cruelly mortal malady corrodes France. Seyssel, who wrote under Francis I. says, in his *Monarchie*, that in his time there were more offices in France than in all the rest of christendom.

disguise, and who left *upwards of four millions of debt* (r); a king, who knew so little of men, whatever may be said of him, that when he would *form them*, as he called it (s), he reaped nothing from his presumption and his efforts but misfortunes and disgrace, who knew so little of true grandeur as to provoke the meanest, the most disgusting, and most foolish flatteries (t); who carried

christendom. "For one hundred that there were in the time of Seyssel, adds Loyseau, who lived under Louis XIII. there are now a thousand; over and above which, there have been created within these fifty years more than fifty thousand." We are told that Colbert said; *When the king creates an office, God creates at the same time a simpleton to buy it: but these two creations must absolutely march abreast*. This saying, particularly odious in the mouth of a minister, is, besides, devoid of sense; and Colbert must have known it, since the only example of Sully, which he followed, was to reform the offices multiplied even far beyond what could have been imagined: you will observe, that the operation of Sully in that respect is of 1603, and that in 1664 Colbert prepared a general state of all the offices of the kingdom. They were found to be 45,780, which is nothing, compared to what we have since beheld. One of the most celebrated ministers of our days said, on the subject of municipal governments, *If any person will buy the government of Pekin of me I will sell it*. I cannot conceive, I confess, what ideas such statesmen, who utter such maxims, have of the public faith; still less do I conceive how a state can subsist for any length of time in such hands.

(r) Two thousand six hundred millions of that time; never has any thing been seen equal to it, or even approaching it, in the most terrible calamities of the kingdom. I have noted, p. 257 and 258, the state of the finances at the accession of Henry IV. Who would have believed that the disorders of the reigns of Henry II. and of Henry III. could be surpassed? Undoubtedly, the science of depredations has been much improved; but, how is it possible for mankind to have bestowed on two princes, whose administrations were so very different, (Henry IV. and Louis XIV.) the surname of GRAND?

(s) Apropos of *Chamillart*.

(t) See in *l'Essai sur les Eloges de Mr Thomas* (c. 33.) the curious list of the panegyrics addressed to him: we know that the good abbe de Saint-Pierre was excluded the French academy for having

ried his egotism so far, as that one of the counsels, which, in his profound wisdom, he gave to one of his grand-children, was, *to attach himself to nobody* (n); who was so insolently vain, who so openly despised the nation, at that period illustrious from so many great men, that, after corrupting it by the scandal of his court, and his own personal example, he dared to nominate for its masters the fruits of his debauches (x); a man, in short, in whom every thing marked mediocrity, except his character, which was more singular than great, if, however, there did not enter into it more affectation than singularity; and that fortune, which placed his reign in the most brilliant epocha, perhaps of all the revolutions of the human mind. Behold the monarch, whom we still call LOUIS LE GRAND (y).

But

having censured, in his *PolySynodie*, the administration of that prince. We know that this literary company proposed, for the subject of one of its prizes, to determine, *which of all the virtues of the king was that which merited the preference?* This was so very silly, and so very base, that Louis XIV. intoxicated with incense as he was, who heard without blushing the prologues of *Quinault*, who read with complacency the adulatory verses, which were flat and insupportable, in spite of the genius of *Moliere* and the art of *Boileau*, would not permit that subject to be treated. He suffered himself, however, to be *deified* in express terms, on a public monument. (See the inscription of the jesuit Menestrier for the temple of honour, consecrated by the city of Paris. Mem. de Maintenon. See also Lettres de Sevigné, tome VI. p. 74. the very pleasant saying on the famous thesis of the Minime friars of Provence, dedicated to the king, *where they compare him to God; but in such a manner, that God is only the copy.*) A thousand inscriptions, the one more foolish and more insolent than the other, are still exposed to our eyes. Assuredly, adulation does not thus become a *national malady*, as Mr. Thomas calls it, without the sovereign provokes it.

(u) See Mem. d'Adrien-Maurice de Noailles.

(x) Edition of 1714.

(y) I expect here the howlings of flatterers, (and they will render me less discontented about my work) the affected disdain
of

But it is with justice we are reproached with *insulting the reign of Louis XIV. without having the right*

of certain pretended politicians, by whom I am not to be awed ; the criticifms, in short, of men of letters, and even the censure of some philosophers ; for nothing seduces the wisest and the best informed man, in favour of the great, so much as the taste they shew for the arts, and the encouragements they give to genius : but, before they condemn me, let them overturn one only of the facts on which is founded this picture of the administration of Louis XIV. which I venture to say is the production of very mature reflection. What will they oppose to it ? Success, victories, public monuments ; in a word GLORY. I will not here discuss the philosophical acceptation of this word, but I wish they would tell me roundly, how many palaces, artists, poets, and conquests are necessary to compensate the innumerable misfortunes of so disastrous a reign. Oh ! my friends ! sublime verses will not feed the people ; victories exhaust them, and, if I must speak out, painting and statues will never illustrate a nation in other respects enslaved : besides, what of all this should be attributed to Louis XIV. ? Mr. Thomas has examined the reign of this prince (in his *Essai sur les Eloges*, c. XXXIII.) with as much impartiality as he could in a work submitted to the censor. It results from his discussion, that the true, and, almost only glory of that prince is, that under him, *not he, but the French were GREAT*. But I think it would be extremely easy to prove, that an intolerant despot, who joined such ignorance to so much vanity, did not give birth to the great men of his age ; that he owes that illustration only to the circumstances in which he was placed ; and that he had a very moderate influence on the glory of his reign, whilst his character and want of knowledge, and his ridiculous presumption, and his repulsing haughtiness, and his insatiable and awkward pride brewed all his misfortunes. I am of opinion, in short, that of all the works of Louis XIV. there remains nothing *to the nation* but the canal of Languedoc, which, without doubt, is dearly bought. Here I recall to mind a very remarkable saying of Mr. de Boisgelin on his reception at the academy. *It remains to him at this day* said he, in speaking of Louis XIV. *to have retracted the great error of his reign*. As a man of letters, I admire the art of Mr. de Boisgelin ; even as a citizen I esteem his courage, thus to have spoke in the *Lyceum*, sullied by so many adulations ; but, as an austere observer, and cool reader, I ask
of

right to do so, since the people have not been more happy since his reign, and the French name has had less glory (z). O complaisant panegyrists of our government, and of our kings, have you not seen then, with us, *a regency*, which compleated the corruption and ruin of the nation, by turning all its views and passions towards the love of gold, sporting with equal effrontery with the public revenues and private fortunes? Have you not seen the signature of the sovereign prostituted in all sorts of hands, and in all circumstances? The traffic of credit and of places publicly carried on, and with an uplifted mask? Lettres de Cachet sold by courtisans, desolating every order of the state, and almost

of what avail to us was that retraction of Louis XIV. and whether it expiates so many faults, let us speak plainly, *crimes*, towards the nation and humanity? Sterile is the courage of a dying king! Courage of little merit in a monarch, who should have been but too bitterly taught by his adversities to forget his *glory*!

I do not here speak of the picture of his age by Mr. de Voltaire; that is, perhaps, the most beautiful panegyric that was ever made; but it is no more than that; and at all the conclusions, one may write in the margin, *white, that is to say, black*, a marginal note which would be too gentle for such a phrase as the following: *I defy any one to shew me any monarchy on earth in which the laws and distributive justice have been less trampled under foot, and where greater things have been effected for the public good, than during the fifty five years that Louis XIV. reigned of himself.* (Defence of the reign of Louis XIV. against the criticisms of Mr. de la Beaumelle.) I abstain from *qualifying* so strange an assertion, for indulgence is due to great men, when they are evidently in the wrong: without examining either, *if there were in the council of Louis XIV. men of virtue superior to Cato*, I only say, that in matter of politics and of history, Mr. de Voltaire is very far from being unquestionable authority; as for the rest, there is but one of that kind for me, and that is, demonstrated truth.

(z) Mr. Guibert, in his Eulogium of Catinat . . . This gentleman is just elected to the seat in the *Academie François*, vacant by the death of the great and eloquent Mr. Thomas, who has so well corrected the authors of such flattering eulogiums! Translator, 1786.

most every family ? A fatal decree brought from Rome by intrigue in the reign of Louis XIV. and supported by his persecution, become, under his successor, a source of mischiefs, troubles and vexations during thirty years ? Forced registries without number ? Beds of justice, formerly the august symbol of the union of the sovereign and his subjects (a), at this day the formidable pageant of arbitrary power ? Edicts, destructive of all rules, all laws, all liberties, uniting the despotism of right with the despotism of fact, wresting from a people, enslaved without resistance, and almost without thinking of it, the merit of their submission, the phantom which represented to them their ancient privileges ? The magistracy four times exiled (b), at length destroyed, and debased perhaps for ever ? One hundred and seventy-two judicial employments, so often declared irremovable, by laws so necessary, that the tyrant Louis XI. could not refuse their confirmation (c), confiscated in one night

(a) At them each man gave his advice, says Hincmar: *non ex potestate, sed ex proprio mentis intellectu vel sententia*. At this day this mute spectacle would be of all ceremonies the most ridiculous, if it were not too frightful an outrage to be turned into derision.

(b) Mr. Talon *avocat general*, in his discourse to Louis XIII. 7th March, 1631, on the exile of three counsellors of parliament, speaks to him of it as a fact *unheard of*. (See the remonstrances of 17th April, 1755, parl. of Besançon, p. 8. The registers of the parliament of Paris are there cited.) It is clear, that despotism has made *no* progress in France since 1631. I only speak of strokes of authority aimed at the parliament of Paris, as the best known. We should never finish, were we to recall the violences of every kind, mandates, exiles, imprisonments, suppressions, illegal commissions, and other vexations experienced by the parliaments of Rouen, Rennes, Bourdeaux, Aix, Besançon, &c.

(c) Ordinance of 1467, by which this disposition was only, in some sort, renewed, as it has afterwards been on the representation of the states general of the kingdom, by the ordinances of Orleans,

night by arret of council, and one hundred and seventy magistrates confined at the same instant, wherever it pleased vengeance to banish them? A few months after, all the parliaments of the kingdom, those obliterated vestiges of our rights, those last feeble asylums of our expiring liberty, destroyed by the same stroke; ten thousand families ruined by this unheard-of outrage, and a hundred thousand involved in its consequences; ten tribunals, composed of *the refuse* of the nation, making the French tremble, and turn pale; all the engagements which bind men together trampled under foot; two open and avowed bankruptcies; thousands of infractions of the public faith palliated by tricks unworthy of a *sharp*; the public funds, till then respected by the most hardy plunderers, reduced, broke into, or carried off (d); the expenditure exceeding the receipt by seventy millions; the most violent, and the most infamous means draining all the resources, and repairing nothing, because the caprices of the day swallowed up the plunder of the evening; speculation increased in proportion to the instability of places; the fiscal nomenclature enriching itself every day under the pen of the most indefatigable extortioners; a king, letting loose more imposts on his subjects than all

Orleans, Moulins, and Blois; for the arbitrary suppression of offices was prohibited by the ordinances of 17th March, 1337, and 9th July, 1341, and even by more ancient ordinances.

(d) Amongst other examples, I shall cite the reduction of the funds for the annuities of the city of Paris, and which was less fatal, but, if possible, more cowardly, and more odious, the laying violent hands on the cash of consignations, the judicial depositary, wherein are vested, by judgment, the sums in litigation between different co-heirs or creditors, &c. where abbé Terrai substituted paper for effective funds; a manifest robbery committed in the king's name. (See in the *Mem. de l'abbé Terrai*, several traits of this kind.)

all his predecessors put together ; new twentieths ; augmentations of the poll-tax ; surcharges on articles of the first necessity ; arbitrary resumptions to the domain ; monopolies sold to the highest bidder, an unskilful management, equal to avidity and breach of faith ; the government labouring to rob individuals with the effrontery of banditti, who brave shame ; two ministers, supple and intriguing at the court, impracticable and obstinate in the city, knowing only how to destroy, reducing all their politics to that fatal art, proving to astonished Europe, that there may be emulation in wickedness, and alternately surpassing each other in their own science ; the nation chained to the car of a prostitute, who decided alike the fate of princes and of nations, of the great and of the small ; within, oppression from the duke and peer to the stage dancer ; without, weakness and dishonour ; the most insolent luxury, elevated to the public ruins, upon disgrace and misery ; despair at its greatest height, the native country of gaiety and of pleasure stained by numerous suicides ; two frightful famines, produced by the atrocious manoeuvres of the publicans and their protectors, ravaging this unsettled kingdom ; in short, (horrible to think !) the king not only authorising monopolies, but becoming himself the monopolist (e), at the expence of the subsistence of his people ? Such was the reign of LOUIS LE BIEN AIME' But he was not wicked No ; but what could he have

(e) This was not even attempted to be concealed, and every body has read in the *Almanach Royal* for 1773, *Tresorier des Grains au Compte du Roi*, M. Mirlavaud. The respectable successor of the robber Terrai acknowledged pretty clearly in his beautiful edict of 1774, for the police of grain, that Louis XV. was a monopolizer.

have done more if he had been so? He was not wicked, but weak, incapable of application, a dissipated man, an egotist; and the annals of his administration will offer to frightened posterity the most disastrous epocha of the history of the monarchy Still repeat, that *there can be no tyranny where there is no tyrant*; say, that our kings have never wished to be despots (f), and that we have never had our Verreses! Those of Rome, at least, were banished, ours enjoy, before our eyes, the fruit of their crimes, of our spoils (g): boast what our kings have performed to merit our confidence; in a period of *five hundred* years, THREE only have been worthy of it.

(f) See a thousand and a thousand works written by venal pens, or inconsiderate authors, and that multitude of books with which the *Maupéou* despotism infested us in 1771, 1772 & 1773. We have already seen, that the king pretends, in fact, to use the power of punishing arbitrarily his subjects *without trenching on the laws*.

(g) ——— *Damnatus inani*

*Judicio, (quidenim salvis infamia nummis?)
Exul ab oſtrea Marius bibit, et fruitur diis,
Iratis; at tu victrix provincia ploras.*

JUV. SAT. I.

C H A P.

C H A P. XIII.

Lettres de Cachet more dangerous for the great, than is to say, for those who invoke them, than for the lower classes; and may strip both of every thing they possess. The esprit de corps, and the jealousy of different orders in the state support despotism. Legal forms, a necessary safeguard for liberty and innocence. Even the good which may be effected by illegal means is fatal to society.

IT is then of a nation, which furnishes in her history examples of a Delaitre, a Duprat, a Poyet, a Marigni, an Isabella of Bavaria, a Louis XI. a Catherine de Medicis, the Guises, a Charles IX. a Richelieu, a Terrai, a Maupeou; (for why not confound together the renowned villain, with the subaltern sharper? they are equally odious, and often equally fatal;) it is of a nation trampled under foot by such monsters that some men dare to tell us that *despotism cannot bud in her bosom*. And whilst the apologists of arbitrary power claim for the king alone an authority without bounds, *which he can never forfeit, which his successor will possess like him*, from an inconsistency worthy of their system, and which usually attends insincerity, they tell us of the *happy inability* of this monarch, *with unlimited power, to make any change in the sacred institutions which enslave the state, the honour and the property of the citizen* (a).

Well

(a) The terms of derision of the edict of February 1771. Speciosa verbis, re inania aut subdola; quantoque majore libertatis imagine

Well then! explain to me this one point; I let you off from all the rest: Far be from us all polemical discussions, all researches into public right, into the monuments of our history; but answer a simple question of which your doctrine supposes the solution. In what, according to you, consists this *happy inability* which saves us from despotism? Can the king, or can he not deprive us at his pleasure of our property, our ranks, our employments? despoil and dissolve all orders of the state? impose on his subjects such tributes as if they were only the farmers of their possessions, and then even with a burthenfome title? (b) Can he or can he not reserve to himself the cognizance and punishment of certain crimes, withdraw the guilty, or those whom he accuses, or those whom he suspects, from under the protection of the laws, from their natural judges, and substitute others in their room who are sold to him? Can he, or can he not, in short, carry off from me my wife, my child? or take from me THE PROPERTY OF MY PERSON WITHOUT ANY LEGAL PROCEDURE? If he can do this, look well to it, he can do all the rest; for when I do not enjoy myself I have nothing left me to defend. Peerages, bishoprics, benefices, rank, profession, birth, are all nothing compared to liberty; and the proudest potentate of Europe would abdicate his throne to escape from the dungeon of Vincennes,

imagine regebantur, tanto ereptura ad infensus fervitium. (Tacit. ann. I. 81.)

(b) Monsieur Dupré de Saint Maur, in his *Essai sur les monnoies*, (Edit. of 1746, page 26.) says: In Poland, the possessor of a small farm, of 470 livres rent, pays 218 liv. 3 sols *taille*, besides 51 liv. 6s. capitation. In another farm of 260 liv. the farmer pays 120 liv. 8s. *taille*, and 37 liv. 11s. capitation. One sees, adds he, that the *taille* often exceeds the third of the produce of the earth, and that the capitation amounts nearly to one third of the *taille*.

nes, if he had no other means of recovering it. As to our wives and children, what can we do for them when we are in irons? and who else will risk his liberty in their defence? Answer me then roundly and without circumlocution. This is not the moment, says an ingenious adversary of despotism, who has put some of these questions in other terms (c); *this is not the moment for paying us off with moving phrases, nor with exclamations: I am asking you a plain question. What will you say? that no king can have an interest in doing these things?* There is not one of them which has not happened in France; but let us quit the events peculiar to our own nation. “There certainly have been
 “oppressed people: if this be not true, deny every
 “history. There have been kings, whatever you
 “may say of it, who have separated their interests
 “from those of their people. There have been
 “ministers capable of abusing the confidence of
 “their prince: if the interest of the chief, well
 “or ill understood, were always the same with
 “that of nations, the happiness of each nation
 “would have always been as ardently sought after
 “by all their chiefs as each individual seeks his
 “own, and that is not altogether true. What
 “will you reply then? That the king is good?
 “Yes, this king; but another? And then a good
 “king may be deceived: must we believe also
 “that all ministers are good, and that they never
 “deceive? You will not exact this from our credulity. Once more, what do you answer to
 “our questions?” Confess that you know nothing of the matter, and that *the happy inability* is only a saying void of sense, a vain phantom of liberty,

(c) *Lettres d'un homme à un homme*, lett. 8. I have never read any thing more cogent nor more unanswerable than what follows.

liberty, under whose fallacious appearances is concealed in reality a very effective, a very absolute, a very despotic power, equally formidable to all orders of the state, nearly allied to tyranny, and perfectly proper to establish it; because nothing is so captivating and so active as the temptations of unlimited power, that natural malady of kings, as Plutarch calls it; a power in short which will never know any bounds as long as arbitrary imprisonments shall be at the disposal of the ministers; nor until our language shall be purged of those odious words *Lettres de Cachet*. If the sovereign can issue one, he may issue one hundred thousand. There is no more reason for limiting this right, destructive of all rights, of all liberty, of all safety, than there is justice in admitting it. We must either be slaves or freemen; that is to say, blindly submissive to the right of the strongest, or dependant on the eternal principles of equity alone (d).

VOL. I.

T

There

(d) It is more necessary now than ever, because information becomes too general to let despots continue so, peaceably. We have a striking proof of this important truth before our eyes. Until now the subjects of republics had at least good litter and the rack well filled. The prudent cavalier did not jade his horse; and provided the moral servitude subsisted, the aristocratic leaders consented that their physical regimen should be indifferently good. But a great revolution has taken place in men's minds, and that is sufficient to acquit us *blotters of paper* of ridicule, who have at least noble and proud principles, and a respect for liberty, *for this revolution is our work*. Man can no longer be a slave in thought, unless tyranny should brutalize him by armed violence. No government therefore can be mild in future unless free. The horse begins to wince, to demand of his rider why he is reduced to the posture of a quadrupede; and the cavalier gives him the spur, the bit, retrenches his litter, and strips the rack, because he is a little out of humour, because the intoxication of power, and the *esprit de corps* produce effects which confound reason. Who can reflect without shuddering, that in a state where men think themselves free, in the eighteenth century, we have seen her
banish

There can neither be any medium, nor modifications, nor exceptions. A man can no more part with the smallest portion of his liberty, than he can with his life; the sovereign who disposes of that of the meanest citizen, will soon decide on that of the greatest: and if he has the right of violating the one, he possesses that of destroying the other, since men hold life and liberty by the same tenure.

What then! these nobles, the hereditary defenders of despotism, who torment themselves and others, with the most inconceivable of prides, that of servitude; who pronounce with so much state-
liness THE KING IS MY MASTER; (an infamous saying, alike injurious to the sovereign and the nation;) will these nobles never perceive that by serving the despot, and purchasing at that price the privilege of tyrannizing in their turn, they are doubly unjust, towards their fellow citizens, and towards themselves? What have we thought we were defending, against all Europe, by flying under the banners of our kings? We are madmen, or stupid, if it be not the noblest of all prizes, and what alone is worthy of being contended for by men in arms; I mean public liberty, and a free condition, where every man may possess without restraint the inheritance of his fathers, the property of his person, knowing no other *master* than the law? all these benefits are precisely what he whom you call your MASTER holds in his hands, as so many spoils he has obtained by conquest from
a foreign

banish one of her citizens, HIS WIFE AND HIS CHILDREN, for claiming the rights of the community, of which he was a member? Very true! This sentence is horrible; but in the logic of despotism it is consistent. It can never reckon, however, but on hatred, it must dismiss from around it all the generations who have personal affronts to revenge. (Note of the editors.)

a foreign nation (e), by means of that very prerogative that you defend, that you invoke, and from which you will be the first to suffer. O titled slaves! the sovereign tramples down the small, and consequently the great, for whom these small find food and riches. Besides, when one part of the state is dried up, it is necessary to wring the other, and the secret is not yet discovered of subsisting the head by famishing the body. But it is precisely at these pretended great that Lettres de Cachet are levelled, which is almost just, since it is they who solicit them. . . . But no; for if it be true that outrages on the rights of the weakest individual of society are more interesting perhaps to public liberty than injuries committed on the greatest, since the latter are in general able to reclaim protection, and defend themselves, whilst the oppression of the former, who have no other succour but that of the laws, announces that the reign of violence is begun; I am nevertheless far from saying with Montesquieu: *The head of the lowest citizen should always be in safety, and that of the Bachas always exposed.* In a state where the constitution should favour this unjust partiality, the *Bachas* would strive not only to place themselves above the laws, if any existed, but to overturn the constitution by which they were so cruelly distinguished. It is in human nature to endeavour to make our enemies partake of the perils to which they

T 2

expose

(e) *Satellites quidem ejus (Scyllæ) homines maximi nominis, non minus optimis majorum exemplis, nequo satis mirari, dominationis in vos servitium suum mercedem dant, et utrumque per injuriam malunt, quam optimo jure liberi agere: præclara Brutorum atque Æmiliorum & lutatorum proles, geniti ad ea quæ majores virtute peperere subvertunda. Nam quid à Pyrrho, Annibale, Philippoque, et Antiocho defensum est aliud, quam libertas & suæ cuique sedes: neu cui, nisi legibus pareremus? Quæ cuncta sævus iste Romulus quasi ab externis rapta tenet.* (Salust. hist. l. l.)

expose us, nor do I see what society would gain by placing its interest in opposition with that of the great. They have succeeded but too well in this fatal and deceitful art, which has introduced despotism and slavery. *But*, says a modern writer (f), *it is not necessary to be a Bacha*. Very true ; but it is necessary for society to have intermediate agents of the sovereignty, and it is of importance to it, to render their destiny so mild, as that they may not be tempted to ameliorate it at the expence of the public. Public men, in a word, are certainly necessary ; why should they be worse treated than their fellow citizens ? Why should they forfeit their natural rights, as they contract more duties ? The former ought rather to increase in proportion with the latter. This is the internal law of nature, and of justice, which is only her order put in practice. When the great shall be subject to a legal inquiry, from which no power, no favour can exempt them, theirs will be doubtless a heavy enough burthen, and they will be only too often reprehensible, and called to account.

It cannot be too often repeated, that it is from the shock of our factitious prejudices, of our private interests, ill understood, whence flow all our intestine divisions, and ultimately the general bondage. Men of rank are less shocked at the most insolent despotism in the person of the MASTER, than at the slightest pretensions on the part of the people : the people endure more patiently the most excessive prerogatives on the part of the sovereign, than the aristocratical insolence of the great. All ranks of citizens serve the common usurper by their puerile jealousies, which are fomented by the ambitious, instead of uniting against him ; and these
foolish

(f) Mr. Linguet.

foolish disputes, that senseless emulation, these frivolous piques, terminate, as well as public liberty, by their being shut up as in a tomb, in the bosom of a Nero or a Caligula, of a Tiberius or a Domitian (g).

This uncertain and precarious manner of existence, however, to which men condemn themselves, by devoting themselves to the research of favour, by making it the sole instrument of their safety, their fortune, their desires, and their resentments; is not this mode of existence an effectual slavery? A stranger who should oppress us, who should plunder, or imprison us, or harass us in every possible manner, would be regarded as a public enemy, and be repulsed by the collected forces of the nation; but does this word KING then so change ideas and things, by the sole harmony of its pronunciation, that he who bears it becomes a respectable individual, in spite of his robberies, because he is not a stranger? Is it the circumstance of birth and climate, or his will, and his actions, which distinguish the citizen from the enemy? This is a very simple question; and if force had not *certain claims* on our admiration, and our eulogies, the answer would be as simple. Undoubtedly the man entrusted with our protection, and our defence, who oppresses and betrays us, counting on his impunity, is guilty of the most odious, as well as the most fatal prevarication. The abuse of confidence dissolves all the bands of society, and of the rights and the duties which unite mankind (h). Ah!

let

(g) *Here was the repository of all the wise contentions and struggles for power between the nobles and commons, lapped up safely in the bosom of a Nero and a Caligula, a Tiberius and a Domitian. (Contentions and dissensions in Athens and Rome.)*

(h) I shall not in this work enter upon this grand question, which can only be so amongst slaves. But I cannot help quoting here

let us not at least be the accomplices of our oppressors. Perhaps we feeble individuals have not the right to oppose an active resistance to the sovereign, when it pleases him to rob one of his subjects of his life, his honour, his liberty, or his fortune, contrary to the forms prescribed by the laws ; at least we do not possess the power ; but every citizen possesses a *vis inertiae*, which forbids him to concur in a manifest injustice ; and the universal exercise of that alone would save the common weal. But, alas ! “ When the progress of military government has brought on despotism, there is no longer a nation ; the troops soon become insolent and detested ; families dry up, and fall into decay, in the sterility of want and libertinism ; the spirit of disunion and of hatred gains all conditions of men alternately corrupted and dishonoured ; the different bodies betray, sell, despoil, and surrender each other by turns to the stripes of the despot (i).”

O my fellow citizens ! I would fain hope that you are not yet reduced to this desperate situation ; but encourage no more, by imprudent clamours, the outrages of despotism. The haughtiness of the judges is unpleasant ; but is the bastinado of the
cadi

here the beautiful inscription engraved by the Arcadians on the column they erected in the temple of the Lycean Jupiter, after putting to death their king Aristocrates, a traitor towards his country, “ Perjured kings are punished sooner or later by the aid of Jupiter. The perfidy of him who betrayed Messina is at length discovered, so difficult is it for perjuries to escape the vengeance of the Gods. Great Jupiter ! Praises and thanksgivings be rendered to you : Protect Arcadia.” *Vid. Plut. in Aristid.* and see also on this fact *Plut. de sera num. vindicta*, p. 458, Polyb. l. IV. c. XXXIII.) Behold *what* was here consecrated to the Gods : See also, by the bye, a proof of the inaccuracy of so many writers, who have advanced *that the execution of Charles the First of England was a fact unheard of in history.*

(i) *Hist. Phil. & Pol. du commerce des deux Indes*, tome dernier.

cadi better? Our courts of justice arrogated to themselves rights to which they had no claim ; but must we not applaud ourselves for having *irrevocably lost them*? If we could recover them, they would not dare, nor could they, nor would they refuse to restore them to us. The venality of offices and of justice is an evil : delays are an evil : the errors of magistrates, and the effects in their jurisprudence is an evil, a very great evil. Our laws, so multiplied, so diversified, so confused, so contradictory, so much out of the reach of almost all the citizens ; that Roman code by which we are partly governed, that code sometimes so absurd, oftentimes so cruel, more often so favourable to tyranny ; but especially our criminal laws, those laws so formidable to liberty, and as much superior in importance to the civil laws, as the honour and the lives of the citizens are to their fortunes ; these laws, far from being perfect, do not even approach perfection : Crimes are not accurately defined in them ; punishments are disproportionate, barbarous, arbitrary, uncertain ; informations, and not unfrequently even accusations, remain secret, to the contempt of good manners, and the very great peril of truth and innocence, unprovided with counsel, and most frequently also even of the power of producing witnesses in their favour (*). The proofs on which criminals are convicted, remain buried in the obscurity of a register, wherein an artful

(k) It is known that in France we have no right to oppose testimony to testimony, and that the judge listens only to the witnesses produced by the prosecutor. This modern law ; for our ancient jurisprudence admitted witnesses on both sides ; See *Etablissmens de St. Louis*, l. I. c. VII.) this modern law appears to me iniquitous and absurd. See note (II.) at the end of this work, where the order of criminal procedures in England is succinctly, but accurately described.

artful or negligent scribe may make the deponent declare what he never thought of ; wherein he who deposes may advance what he would not dare to attest before a solemn tribunal. Our procedures, which seem combined rather to search for criminality than to discover the truth, *are still dishonoured by the atrocious and senseless method of the torture, which makes reason and humanity shudder* (1). The government can, and ought to reform all these abuses, and a great many others, as the public manners and circumstances will permit. But then let this reform quadrate with our natural and acquired rights : let us have no disorders to re-establish order, no attack on the eternal law to correct positive

(1) What is astonishing is that the Roman code attributes the invention of this execrable method to their regard for the lives of men. " It is *pity*, they there say, which has wished to afford " innocence the means of manifesting itself by an unshaken denial ; " and in the contrary case, of forcing crime to reveal itself by an " avowal." Never was the question begged with so much absurdity and barbarity. *Illa tormenta, says Cicero, gubernat dolor, moderatur natura, cujusque tum animi, tum corporis regit quæstor flectit libido, corrumpit spes, infamat metus, ut in tot rerum angustiis nihil veritati loci relinquatur.* Read on this interesting subject the excellent treatise of Beccaria *de Delitti*, and the German treatise of Mr. *Sonenfels*, on the abolition of the torture. Consult also the narrative of the conferences held on the examination of the criminal ordinance of 1670. You will there see that Mr. *Puffort* says, in speaking of the QUESTION, *that setting aside the prejudices in favour of an ancient practice, it would be found that the truth has rarely been forced from the mouth of a condemned person.* The first president de Lamoignon answered, that he saw great reason for abolishing it. *Yet it is still applied !* and the 19th title of the ordinance of 1670 prohibits the punishing with death the person who has undergone it without confessing any thing ! your only object then is to torture men ! to make criminals !

N. B. Since this was written the torture has been abolished in France, at least in part.—[But what good reason can be urged for continuing the horrid usage *after condemnation*, as it is still practised ? Does not the observation of Mr. *Puffort* still apply ? *Translator.*

tive laws : let not authority overstep the immutable bounds assigned to it by nature. Alas ! I know too well that there is no longer any liberty wherever the citizen, corrupted by false subtilties, gained over by gold, or terrified by violence, can suffer any power in his country to raise itself above the laws (m), and where liberty no longer is, there is no public spirit. Then may we say, as at Rome, with a great philosopher : (n) “ When you shall “ see the bar overflowing with people, the Field “ of Mars filled with a numerous multitude, and “ the circus, where the greatest part of the nation “ assemble, know, that there are in all these places “ almost as many vices as there are men : though “ clad with the toga, they are not in peace : the “ smallest lure of gain would determine them to “ cut each other’s throats.” But, for this private interest, our idol, let us beware of pretexts, of illusions, of sudden changes : let us steer clear of pretexts, of illusions, of sudden changes : let us steer clear of caprice, of envy, of the *esprit de corps*, that destructive bane of all sociality. After all, the function of a judge is one of the most respectable with which a man can possibly be invested. I know nothing in the world more interesting, *than a science which teaches to distinguish truth from falsehood, which teaches men to establish the one, to prevent, or to rectify the other ; the theory of which employs the noblest faculties of the soul, and whose practice calls into action the first virtues of the heart ; a science as universal in its use as in its extent, combined, adjusted for the good of each individual, and which comprehends, in short, the whole institution of bodies politic* (o). I know

(m) *Bonus civis est, qui non potest pati eam in sua civitate potentiam quæ supra leges esse velit.* (Cic.)

(n) *Senec. de ira, l. II. c. VII*

(o) *Blackstone’s Comment. on the Laws of Eng. Prelim. Dis.*

know of none who merit more esteem than they who worthily profess such a science : I see nothing more important for the public weal, than these men appointed to maintain concord amongst citizens, to secure their conditions, to protect and regulate the private fortunes which compose the social wealth, to restrain vice, to support the police, to punish crimes. And such are the useful magistrates whom we should disdain, in consequence of a gothic prejudice, as dangerous as it is ridiculous and contemptible ! We should sour them by our insolence and our satires ! The government studiously encourages this unthinking conduct ; for it stands in need of calumniated senators, of ruined chevaliers, of treasurers who cannot take care of their own property, to absolve Clodiuses (p). The money which makes the magistrates, must necessarily influence and bias them. Still will they be odious to power, for the despot will always see defend-

(p) *Cic. Epist. ad Attic. lib. I. epist. XVI.* “ If you would know what has produced the acquittal of Clodius, you must look for no other cause than the indigence, and want of honour of his judges No man ever saw in a gambling-house such an infamous assemblage It is Crassus who has conducted this whole affair He made the judges come to his house, he promised, he gave securities, he made presents. Much more, good God, what horror ! He procured over and above, for certain of the judges, the favours of some ladies, and of some young noblemen.” — *Itaque, si causam quæris absolutionis . . . Egestas judicium fuit, & turpitudine Non enim unquam turpior in ludo talaris concessus fuit Nosti CALVUM Confecit totum negotium : arcessivit ad se, promisit, intercessit, dedit. Jam vero (O dii boni, remperditam) etiam noctes certarum mulierum, atque adolescentulorum nobilium introductiones nonnullis judicibus pro mercedis cumulo fuerunt.* Reader ! You know no country, doubtless, where such manœuvres have been practised ? But if there were one its inhabitants undoubtedly would not wish for liberty, any more than they would be worthy of it. Alas ! what right has a man without morals, to complain of the corruption of his judges, when he labours to render them as bad as himself ?

defenders of equity in the judicial bodies, and this word, *equity*, has a very importunate sound to the man who does not what is just. The magistrates talk to him of forms, and these teizing forms are the bridle of arbitrary power : their depositaries, therefore, cannot become the devoted satellites of the tyrant : they recall to mind very tenderly, but *sometimes*, in short, the rights of the nation, the ancient limitations of authority ; and no despots, any more than Louis XIII. (q), can bear the idea that their authority can be limited. Kings therefore hate the magistrates, and fear them, (and consequently never treat them well, but from necessity, or in order to corrupt them), whilst they see in a noblesse, who from habit, ignorance, and idleness, precipitate themselves into their legions, only the trusty instruments of passive obedience, that adorable virtue, that holy duty, to which all others are reduced Oh ! I say it roundly, I who myself, born in this privileged class of nobility, have besides considerable causes of complaint against *the gens d'ecritoire*, (*the gentlemen of the inkhorn*, a term of contempt made use of by the noblesse in France, when speaking of the robe), never did any order of the state do more for the country, and at less cost than the magistracy. If we except a very few occasions, where the general fermentation was contagious for this august body, and those times, when debased, corrupted, degraded by despotism, it forgot its duties, and thought of nothing but its own personal interests, it always defended the rights of liberty, and was a powerful dyke against the inundations of factions and arbitrary power. And we, a military noblesse, who
think

(q) Louis XIII. stopped his ears when they spoke to him of the privileges of such or such a province.

think ourselves entitled to the first rank, and who, in fact, have none, we, whose workmen form *corps*, and who have none ourselves; we, who behold *one hundred thousand families*, springing out of the dregs of the nation, participating our rights, nearly annihilated, it is true; we, whose existence is no longer attested but by the delirium and insolence of the plebeians, who are pushing to get out of the crowd, imagining they become noble by letters of the prince, or at the price of money (r); we, slaves

(r) I have often heard the following saying of Francis I. pronounced with emphasis. He went to see the famous painter, *Leonardo del Vinci* on his death-bed, and said to his courtiers: *I can make in one day many noblemen like you, but God alone can make a man equal to him I lose.* The vulgar stupidity of those who were astonished that a king could testify so much respect and sensibility for a great artist, merited this arrogant discourse, which is attributed also to Charles V. picking up the brush of *Titian*. But I ask pardon of those who admire it; besides, I do not discover the least good sense in it. Were they nobles by birth, whom Francis I. pretended he could make? That were foolish both in thought and speech. Were they titles which he could create? Yes; he could so, although in a well regulated society titles ought only to be granted to useful services which require great talents, which would assimilate the titled man with the man of genius; besides, that we must always recur, as heretofore, to that very sensible, and that very insolent saying, as paltry scribblers have dared to call it: *Who made you a Count? Who made you a King?* But is it really true that titles make NOBLEMEN? No, truly. The ribband with which a valet of the court is decked, can no more make a seigneur, than a purchased title-deed can make a noble. It is the public opinion which confers distinction, and pre-eminence acquired by money, or lavished by favour, will never imply any thing but the wealth or court credit of those whom they decorate. By whatever means of prostitution the noblesse has been degraded, it is still easy to distinguish the *new men* from the races who have merited well from their country. The king can no more therefore make a SEIGNEUR, that is to say, a man whose ancestors have acquired by their merit, their services, and their talents, the public consideration, than he can make an artist of genius. Doubtless, the *Buffons*,
the

slaves from state, from prejudice, from ignorance, and who still farther boast of being so; we have done more to advance despotism, of which we were the first victims, which had never any other view than to keep us in abjection, which is still jealous of our phantom; we have done more towards its advancement, I say, than all the other bodies of men together ever have or ever will do; and we are now its supporters. Behold our titles to the public gratitude! Truly, I do not see what we have to be proud of.

But, in fine, what can be the object of our invectives against the *men of the robe*, on whom we so intimately depend? Do you wish the magistrates to be more upright, and more enlightened, that is to say, more respectable than they are? Respect them more; animate them to fulfil their arduous duties by esteem and confidence; consider that a man neither likes his profession, nor executes it well, but inasmuch as he esteems it; that he does not esteem it unless he sees it held in estimation; that

the *Duguay Trouins*, the *Duquesnes*, &c. do more honour to the corps of which they make a part, than they are honoured by it. But I repeat it; the distinction, which all men, worthy of possessing it, would desire to be only personal, *for, who has lived for our glory? and how can what was before us belong to us?* (Senec. Ep. 44.) that distinction is only due to great services, and great talents. It is for the nation to distinguish those who serve, and who honour her, and to acquit the debt towards them; it is for her alone to decree a recompense, which it is almost as vile to purchase as to sell: but, however it may be with respect to tinsel-plebeians, or with great names transmitted to us, with noble hereditary or personal, ancient or modern, obscure or illustrious; say, to all these little men, *so proud of titles, invented to puff off the one, and to degrade the others*; say to them, with Seneca, (Ep. 31.) *Have we not all the sky above our heads?* [It is the count de Mirabeau, of an ancient house, who feels and reasons thus in France, and in a dungeon; and are they not sentiments worthy of nobility? *Translator.*]

that a scrupulous vigilance to maintain, or to establish each individual in the enjoyment of his civil rights, without encroaching on those of another, requires profound and well-reasoned discussions, and compels delays, especially where the laws, like ours, are complicated and imperfect. When we shall be disposed to exchange the advantages of legal proceedings for arbitrary power, for tyranny, poverty, idleness, barbarism, and uncultivated deserts, we may enjoy the same expeditious mode of trial with the enslaved nations. "In Turkey," says Montesquieu (s), "where very little attention is paid to the fortune, the lives, the honour, of the subject, all differences are speedily terminated one way or other; the manner of terminating them is a manner of indifference, provided they be put an end to. The Bacha being first enlightened, makes them distribute, according to his fancy, the bastinado on the soles of the feet of the parties, and sends them about their business. If you examine the formalities of justice with respect to the difficulty a citizen has to get his property restored, or to obtain satisfaction for some outrage, you will find, doubtless, but too many; if you regard them as connected with the liberty and the safety of a citizen, you will often find too few; and you will be sensible that the difficulties, the expences, the delays, nay, even the dangers of justice, are the price paid by every citizen for his liberty."

In a word, men are imperfect; their decisions therefore may be unjust; but as human beings are obliged to treat with human beings, they are under a reciprocal necessity of bearing with their frailty; all they can do by way of remedy is, to take the greatest

(s) *Esprit des Loix*, vol. I. l. VI. c. II.

greatest precautions, the best adapted to the knowledge of the human heart; the most carefully combined from experience against the prejudices, the passions, and the partiality of those whom they have constituted their judges. It is with this view that legal forms have been invented; it is to furnish innocence with the safeguard of time, which dissipates prejudices, which calms the passions, which unveils partiality, and brings forth the truth. As they are more or less perfect, these forms constitute, with reason, our greater or less degree of security, because all human affairs are necessarily subject to the calculation of probabilities, moral, and even physical certainty being absolutely no other than a probability. Thus, from a wisdom worthy of commendation, and which should be imitated by all judicial bodies, the Roman judges never affirmed that the death of a criminal was lawful, but only that it appeared so to them. *Jure casum videri pronuntiavit* (t). Such was the sacred formula: but we cannot justly assimilate in short the judgment of several magistrates, responsible to the sovereign, and the tribunal of which they are members, who have no other occupation than to inquire into affairs in litigation; who mutually enlighten each other; who pronounce from fixed and known laws a sentence subject to revision; we cannot, I say, compare the judgment of such men with that of a minister, obliged to take the word of one of his overloaded subalterns; who has no other rule to follow than his own interest, his passions, and his pleasure, and who, knowing himself to be under the protection of authority, which is interested, as he believes, to support his errors, and

(t) Cic. Orat. pro Milone, c. III.

and even his violence, may oppress the citizen with impunity. *Lord Clarendon*, who will not be suspected of too much partiality against royal authority, and who had cruel reasons of complaint against his countrymen, has given these remarkable words in his excellent History of the Civil Wars: “ There is no example where the parliament (of England) has condemned innocent men, who have defended themselves, whereas the guilty have frequently so well managed their defence, that they have been acquitted; and the reason of this is, that not only pity, which is inseparable from humanity, usually succeeds to the first emotions of indignation, but also that the changes are the most frequently founded on the public hatred, which is not always susceptible of proof; and the accusers, actuated by passion, exaggerate and establish them for the most part on hearsays, so that the person accused being found less culpable than had been advanced, the judges think some reparation is due to him in point of honour, and he often escapes from the censure he may have merited, in consideration of the injury he has sustained, by having things reproached to him of which he was not guilty.” This is what a very wise statesman says of the most passionate tribunal that ever was, and he concludes from thence, that in general the sovereign, by staying the course of justice, acts against his own interests, and those of the favourite, whom he withdraws from the law; that he thereby renders himself, in some measure, the accomplice of his crime, and leaves no longer any doubt that the accused is guilty of what is imputed to his charge. Alas! what might not be added, when the affairs of individuals only are in question, in which

which the government is no way interested, but by subaltern and criminal intrigues?

But under whatever point of view we regard the administration and administrators, ignorant or enlightened, upright or corrupt, it is of infinite importance to society, that the right of every individual should be protected, not by a partial force, the unequal operation of which would wound the rights of the community, but by the combined powers of that society; that is to say, by virtue of the sovereign power as regulated by the laws, a power which, according to the expression of the sage *Locke*, is only unlimited for the public good. Now, no man whatsoever can be required, under the pretext of the public good, to sacrifice his natural liberty, since society has engaged to maintain it.

In short, it is in general a very false maxim which says: *that it is of very little importance by what means good is produced.*

A celebrated author has written these strange words: *The kings of the earth should look upon themselves as much bound to do miracles as the King of Heaven, and to work them with the same intention, when they THINK THEMSELVES obliged to it (u).* I venture to pronounce this principle absurd, the comparison indecent. If the *King of Heaven* has ever worked miracles, he was certain of not being deceived in his views and his means; but what man has that certainty? There are none whose genius is sufficiently extensive, and whose views are sure enough to foresee every thing. Who then shall arrogate to himself the right of raising himself above the regulations consecrated by the public wish and consent? Shall the weakest, the

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most

(u) *Ami des hommes*, tome IV. p. 75.

most ignorant, the least enlightened, of mankind be invested with this power? He who is hemmed in by the most active and most corrupt passions? He who is situated the farthest from the truth? Is it not evident that the avarice of sovereigns and their ministers or favourites will become the *raison of state*, and will decide on the necessity of the MIRACLE? Far be from us these vague applications of celestial to terrestrial affairs, which gave rise to the inquisition, and can only be of use to despotism. Every thing is regulated and fixed in nature, and by the fundamental law of all human societies. PROPERTY decides every case, limits every jurisdiction, establishes and circumscribes all our duties. No man has the right to force a man to do good even to himself, provided he does no harm to others (x). No man therefore, *à fortiori*, should have the right to compel a whole people to follow other laws than what they themselves have made, or have voluntarily received. Were it even possible that one human being could have the certainty of possessing more knowledge than all the rest, were his intentions as upright, as incorruptible, as his genius was vast, his judgment infallible, and his sight penetrating, still would not that excessive superiority authorize him to give his opinion for law. Let him instruct, if he can; let him direct the general will by persuasion, that power of all others the most efficacious, the most legitimate, and most flattering; but let him not commit violence on the public wish, nor change the legislation and the legal forms at his pleasure, if he does not wish to be a tyrant, and to pave the way for tyranny.

It

(x) *Sic uteretur ut non alium lædas.* This is the only restriction of the English laws respecting the exercise of the right of property.

It remains for me to refute one of the favourite arguments of the partizans of lettres de cachet, and that which seems the most to interest the citizens in the support of this odious inquisition. The royal authority, which has reserved to itself arbitrary orders, *for occasions in which the public good requires them*, has been pleased to give us, as a trait of its paternal kindness, *the use it makes of them, for the good of private families* (y). A great part of the nation has been seduced by this specious pretext, and we hear it every day repeated, that strokes of authority are necessary for the honour of the citizens. If there be, say they, some unfortunate persons oppressed by false reports, by domestic intrigues, and by impositions on authority, who are confounded with the bad, lettres de cachet, on the other hand, more frequently save families the disgrace of seeing their names sullied by opprobrious arrêts, and purge society, without dishonouring the citizens.

Let us for a moment admit this assertion, which is so often repeated, without controversy; let us examine the consequences deduced from it, and inquire how far it is well founded.

(y) See note (g), p. 88, chap. VI.

C H A P. XIV.

If lettres de cachet confound the innocent and the guilty, it is a sufficient reason to abolish this method for ever; for every method which tends to sacrifice an innocent man, did he stand alone against all, to a pretended public interest, is tyrannical. Lettres de cachet do not prevent the disgrace of families, by withdrawing the guilty from society, and the public tribunals. Were the infamy not personal, according to our prejudices, it is in the power of the sovereign to make it such.

IF, as I think I have already demonstrated, each citizen has, in all cases, and without exception, the right of being judged only according to the laws, and by competent judges, judicial information can alone operate the legitimate acquittal or condemnation of an accused person; even a legal accusation, and more strongly, that which is founded only on informations, leaves the presumption of innocence, and he is not to be deemed guilty before judgment. But amongst the number of citizens smitten by lettres de cachet, whether for the purpose of withdrawing them from justice, or to save them from its consequences, nobody will deny that there are some innocent: now I say that this is a sufficient reason for abolishing for ever this arbitrary mode of proscription, which may equally involve criminality and innocence, and which never proportions the penalty to the crime,
since

since the punishment inflicted is uniformly the same for all those who are accused by them.

It is an axiom of the English law, that it is better that ten guilty should escape, than one innocent man lose his life, and this axiom is the voice of humanity, confirmed by reason and experience. The opposite principle would break down all the barriers of natural law, and would be subject to the most odious and most fatal applications. It would surrender the feeble without defence to the mercy of the strongest, and render right subordinate to force, to the will of intrigue, credit, favour, cupidity and the vilest passions. Justice arrested at every step by the administration, which would avail itself of this pretended *public utility*, of which it constitutes itself the sole judge, and to which every thing must be sacrificed, justice would be mutilated and debased. Strokes of authority becoming the main spring of government, as the easiest to manage, and the most rapid in their execution, would soon be no other than an execrable traffic which would annihilate private and public safety.

These are the consequences of those vague maxims, the true sense of which is not defined, and the forced application or extension of which are so favourable to tyranny. *The safety of the state is the supreme law*, say they. Agreed; and I conclude that private, which is so inseparably connected with the public safety, ought to be inviolably respected; but I will never conclude as they do, that an innocent man may be sacrificed to the public weal; for an abominable act of tyranny can never be necessary to the welfare of the state; and the welfare of the citizen is no less the common cause than that of the state; for if one citizen may be oppressed, the oppression may successively extend to all. Let them tell us that *it is good that one should perish for*
the

the whole; I shall admire, with the eloquent Rousseau, *this sentence in the mouth of a worthy and virtuous patriot, who voluntarily consecrates himself to death for the welfare of his country*; but I shall add, with this respectable philosopher: “ If it be understood that government is at liberty to sacrifice an innocent person to the welfare of the multitude, I hold this to be one of the most execrable maxims that ever tyranny has invented, the falsest that can possibly be advanced, the most dangerous that can be admitted, and the most directly opposite to the fundamental laws of society. So far from one perishing for the whole, all have engaged their fortunes and their lives in the defence of each other, in order that individual weakness may be ever protected by the public force, and each member by the whole state. After having, let us suppose, cut off from the people one individual after another, press the partizans of this maxim to give a better explication of what they understand by *the body of the state*, and you will see that they will at length reduce it to a small number of men, who are not the people, but the officers of the people, and who being engaged by a particular oath themselves to perish for its safety, pretend from thence to prove that society should be sacrificed to theirs (a).”

The

(a) ENCYCLOPEDIE, at the word *économie*, (*morale et politique*) edit. de Paris, 1755, tome V. In this piece, in the social contract, and the other polemical writings of Rousseau, the principles they contain, which do not all belong to him, are not always perhaps correct; but it is filled with magnificent details, like every thing which has come from the pen of that great and eloquent writer. O! what a revolution would two men of that stamp, and who succeeded each other in the same principles, operate in the human mind, and in the political systems of society!

The protection the state owes to its members is unlimited, nothing can dispense with it; and the prescriptions of political empirics are a culpable and fatal quackery, if they trench on the smallest right of the most inconsiderable of the citizens. What! must the use and public sale of poisons be ordained, because, being modified, they may happen to operate some particular cure? Shall we make use of this formidable remedy, when we can employ others less dangerous? Because the stroke of a dagger which chance directed into an internal abscess saved a Greek his life (b), must all hands be armed with poniards, and all men be left at liberty to pierce the bosom of those whom they suspect of illness. Lettres de cachet are sometimes useful; but they may be continually fatal to the liberty of every individual: No matter, the practice must be retained for occasions wherein they may be useful, and the exercise of them continued in expectation of these occasions. What madness! the constant and impartial execution of the laws would produce all the general good that Lettres de Cachet can, to society, and would produce it more surely, because several men, who examine a matter of fact, are better enabled to discover the truth, than one man, who the most frequently does not examine; because the stability, the uniformity, the notoriety of every regulation, is that which best ensures its observance. Nothing, on the contrary, can remedy the evils which spring from arbitrary imprisonments, because there is no mode of appeal against the authority which orders them, without assigning any motives, and which is consequently judge and party. If the magistrates venture to pre-

(b) He too was a tyrant! (Jason, tyrant of Pheros.) *Cic. de Natur. deor.* l. III.

prevaricate, doubtless, they commit a frightful crime, and the evil resulting from it is very great; but the law by which they should have judged, which they have violated, or ill interpreted, that law subsists, and rises up against them; whereas the minister who suspends its exercise risks absolutely nothing, and deprives his unhappy victim of every resource. But were lettres de cachet calculated to do as much or more good than harm, there would still be no admissible reason for allowing the use of them, since they do not do good exclusively, and the evil that attends them is irremediable. The truth is, that arbitrary orders can only operate some partial good: Is this a sufficient reason for turning away our sight from all their necessary evils? It is the last pitch of madness, or the most odious trick of tyranny, to pay more attention to accidental, than to general inconveniences.

Thus far I have proceeded on the supposition that lettres de cachet save families from disgrace, doing at the same time justice to society. I shall now overthrow this frivolous and illusory pretext, which the great have held out as a bait to every class of men (c).

So far from its being true that these thousands of prisoners detained in strong castles, are shut up there to avoid opprobrious sentences, or their execution, scarcely can we reckon a few such instances;

(c) Observe, that in the supposition that lettres de cachet really save some families from dishonour it can only be some of distinction. Thus, to save a few citizens from a partial inconvenience, who are so well indemnified besides in other respects; to save them, I say, from future contingencies, for in fact these occasions which form the last intrenchment of the opinion I am combating, are very rare, the apologists of lettres de cachet wish the support of arbitrary power which keeps a whole people in chains.

stances; but were their number infinitely greater than it really is, what is the meaning of these words: *It spares families the disgrace!* It is the crime or the punishment which constitutes disgrace?

(Le crime fait la honte, et non pas l'échaffaud.)

This is the first question that presents itself. Since when is the mark of infamy no longer personal? In China a senseless law visits the faults of the children on the father. At Japan a whole family, an entire district, are punished for the crime of an individual. I do not know that there is an instance in any other country of a similar madness, or of such atrocity. In China it is alleged at least that the father merits chastisement for having brought up his children badly. But *the brother*, but *the sister!* *instead of punishing them*, Plato would say, *they should be commended for not resembling the guilty*; but how can the children, from whom the law has only required submission towards the authors of their being, be responsible for their conduct? At Japan men are so ferocious, that it was judged necessary to make the laws still more ferocious than them; a senseless policy, without doubt; (for a nation is never very bad but when the religion or the government makes it so; thus, to aggravate the yoke of religion or of government, is, instead of remedying the evil, to augment its source;) a senseless policy, I say, but at least explicable. But we, whose manners are gentle, and passions moderated; we, whom fanaticism alone has rendered cruel, why should a prejudice which is so much so, be suffered to take root in our breasts? Why should we make a whole family accomplices in the offence of one of its members? Why should infamy,

famy, that punishment so terrible in every country where honour is yet known, be allowed to aggravate the misfortune of those who have given life to a criminal?

This prejudice, which I neither know, nor do I conceive, does it really exist? It depends on the sovereign to destroy it: he, alone, by that empire of opinion, which he exercises at will over a credulous and imitating people, can change the universal morality; but it is still more easy for him to produce this change in those who depend upon him. The opposition between natural justice, and the opinions of the vulgar, has always arisen from the errors or the artifices of the legislator (d). Let the prince punish the guilty, and recompense or distinguish his virtuous relation. Every man will soon learn that all depends upon himself. In 1763, LORD FERRERS, allied by blood to the royal house of England, was hanged *publicly* in London for murdering his steward, which did not prevent his brother from taking his seat in the House of Peers. It is the same in England with respect to all ranks of men, and every crime. The criminal recovers his rights the moment he is punished: they visit his widow; they console her; they marry his children, they bear his name; it does not occasion a blush. Why should this inflexible equity have more inconveniencies amongst us than amongst the English? It would produce excellent effects in France, as well as elsewhere. A single great example, which would teach men that neither favour, wealth, nor birth, are pledges of impunity, would serve as a check to a nobility too much degraded by the prince, and by his ministers, and too violent with
their

(d) *Rex velit honesta, nemo non eadem volet.* (Senec. in Thiest.)
This is true every where, but especially in France.

their inferiors. The people, perceiving that the severities of justice are not confined to them alone, would be less discontented with their lot, more attached to the sovereign and the laws (e). The chaf-

(e) Read the following beautiful picture of the injustice and partiality of social confederations, *which strongly protect the immense possessions of the rich, and hardly allow a poor man to enjoy the cottage he has built with his own hands.* It is drawn with a masterly hand, and is the more affecting as it is by no means exaggerated, at least relatively to France:

“ Are not all the advantages of society on the side of the rich and powerful? Are not all lucrative employments filled by them alone? Are not all favours, all exemptions reserved for them? And is not public authority entirely in their favour? If a man of weight robs his creditors, or commits other knaveries, is he not always sure of impunity? The strokes he bestows with his cane, the acts of violence he commits, the murders even, and assassinations, of which he is guilty, are they not all affairs which are hushed up, and of which there is not the least mention made at the end of six months? Let this same man be robbed, the whole police is instantly in motion, and woe to the innocents he may happen to suspect. Does he pass through a dangerous place? The guards take the field to escort him. Does the axle-tree of his carriage break? Every body flies to his relief. Is there a noise at his door? A word from him and all is silent. Does the crowd incommode him? He makes a sign, and every body makes way. Does a waggoner happen to be in his way? His attendants are ready to knock him on the head. And fifty people on foot going about their affairs, shall be crushed, sooner than an idle knave be retarded in his equipage. All these marks of respect do not cost him a farthing, they are the privilege of the rich man, and not the price of his riches. How different is the picture of the poor! The more humanity stands indebted to him, the more does society refuse him; every gate is shut against him, even those where he has a right to enter; and if he sometimes obtains justice, it is with more difficulty than another would obtain a favour. If statute-labour is to be performed, a militia to be drawn, it is then he has the preference. Besides his own burthens, he always bears that from which his neighbour has credit enough to get exempted. On the smallest accident that happens to him, every body gets at a distance from him; if

“ his

chastisement of a noble, legally ordained, and publicly executed, would make more impression than the punishment of many thousands of obscure villains. Secret punishments, on the contrary, inflicted by lettres de cachet, render authority odious, and the criminal almost interesting. Men are, with reason, always inclined to believe that he would have been condemned in open day, had it been practicable. If the crime be so notorious as not to admit of doubt, they fly to the opposite extreme. The punishment which is not seen, has not the appearance of an expiation. *Never has a great nobleman been exemplarily punished in France but for rebellion against the King, or his ministers.* Whilst they wound only the nation, her laws, and humanity, they are sure of pardon.—Certainly, this is telling us with a witness, that we are the sport of a small number of men! But let us resume the language of prejudice.

What disgrace is saved to families by interrupting the course of the laws? The criminal, taken out of the hands of the magistrate, is judged, or he is not. If he be judged, the sentence is as public as if it had been executed, and nobody disputes the sovereign's right to pardon, that heavenly right, which he alone participates with the deity, and with which it is necessary to intrust him, because our legislations are barbarous, and our punish-

" his poor cart is overturned, so far from being assisted by any
 " body, I reckon him lucky if he escapes the jeers of the faucy
 " domestics of some young duke who is passing by. In a word,
 " all gratuitous assistance flees him in the day of need, precisely
 " because he has not wherewithal to pay it; but I look upon
 " him as a lost man, if he has the misfortune to have an honest
 " heart, an amiable daughter, and a powerful neighbour."
 (Encyclopedie, au mot *Economie*. Morale & politique.) O
 Rousseau, how much thou discouragest the writer who has the
 same ideas with thyself! But how much he admires thee!

punishments atrocious; without this, every abolition of a crime, every remission of punishment, would be an outrage on society, and there would be little difference between him who kills against the law, and him who saves in spite of it. Singular clemency, after all, is that which pardons offences done to others! But, in short, the prince can pardon; he can therefore save the guilty from the ignominy of execution without usurping on the laws. If the sentence be not delivered, who will hesitate to pronounce that it is authority which chains justice, by imposing silence on the tribunals? A family thus situated is not the less known to have had the misfortune of reckoning amongst its members a distempered part. The pretended pardon granted by the sovereign, therefore, is more contrary to equity, than it is useful to the favoured citizens. “By granting pardon to a person regularly tried, it excites to repentance by the pardon; by taking the guilty out of the hands of justice, it excites to crimes by impunity. In pardoning, the sovereign sacrifices and confirms the law; by withdrawing the guilty from justice, he annihilates all the authority of the law: in pardoning, he refers to the law the inquiry into the nature of the offence, and the truth of the motives which decide the application of the pardon; by withdrawing the guilty from justice, he sets aside, and reproves the law; he allows it no inquiry (f).” Explain to me, I beg of you, how a partial favour, which interests only one family, can repair so many breaches of the *res-publica*? To consider this question, in short, in the point of view only of political convenience, that idol of pretended statesmen, to regard

“it

(f) Remonstrances of the Parliament of Paris, 1763.

it only as the personal interest of the monarch, why deprive himself of the most glorious of his prerogatives, that of rewarding by himself, and of punishing by the magistrates? Why does he not leave severity to the account of the laws, by reserving to himself the treasures of clemency of which he is the universal dispenser? It is for this occasion alone that he has claimed the exercise of an arbitrary will; he has sworn that in all others, he will respect the laws, and make them be respected (g). The meanest of mortals may violate them as well as he; but he alone can do it with impunity: he unites therefore an infamous cowardice with the most odious prevarication, since it only costs him *the will* to commit any crime (h).

I have

(g) See note (b), page 56, chap. IV. the formula of the oath taken by our kings. (*Salvo condigno misericordiae respectu.*)

(h) ——— *Merita in vero*

*Gran lode una vendetta, ove non costi
Più che volerla. Il torre altrui la vita
E facoltà commune
Al più vil della terra: il darla è solo
De' numi e de' regnanti.*

(Clemenza di Tito. di Metastaf. att. III. scen. VII.) What an idea is this *torre altrui*, &c. and how it is expressed! The so well known trait of the pleading for Ligarius, where Cicero says to Cæsar: *There is nothing greater in thy fortune than the power of preserving the lives of a multitude of men; and nothing greater in thy soul, than to possess the disposition.* (*Nihil habere nec fortunam regiam majus quam ut possit, nec naturam melius quam ut velit, servare plurimos.* Pro Ligar. 38.) This trait, I say, may have inspired Metastasio; but the Italian poet appears to me greatly superior to the Roman orator, even on the supposition of his having borrowed the thought, and abstractedly from the circumstances which dishonour Cicero, since to extol the clemency of an usurper is a cowardly falsehood. I find, on re-perusing Seneca, whom I confess I turn over frequently, and always with new pleasure, *There is not even the meanest slave but has the right of life and death over you.* (Epist. IV. Read also de Clement. l. I. c. V.) Well, haughty despots, pride yourselves in this fatal power! But never forget,

that

I have already said, that there is only one sort of beneficence for kings, and in general for public men; which is JUSTICE. If there be any prince, any minister, whose good and easy heart gives way too readily to the tempting pleasure of obliging, let them distrust themselves for the interest even of their inclination; for in the requests that are made them, they will too often discover the favours they are disposed to grant. Their *beneficence, if easiness of disposition* can deserve that glorious name, will every moment be taken by surprize, and they will assuredly make more persons unfortunate by their fatal complaisance, than they can make happy ones; for the man of intrigue can never satiate his thirst of gold, his ambition or his vengeance; whilst he whose liberty is ravished from him, has lost every thing.

I shall lay before my readers, in concluding these reflections on the tyranny of lettres de cachet, some fragments of a letter written from the dungeon of Vincennes. The unfortunate young man who wrote it fell a victim to the credit of his family, who, urged by other motives, feigned great anxiety on the subject of a criminal procedure against the prisoner, for having carried off a married woman. It is of little consequence to the reader whether the offence be real or supposed; but I cannot state with more force and precision, the injustice and malignity of these pretended favours, by which a man is slowly sacrificed, under the pretext of saving him: Like to that Spaniard, who strangling Don Carlos by order of his father, said to him: *Calla, Calla, Senor Dom Carlos: todo lo que*

that whosoever despises his own life is the master of yours, and that we have seen as many victims sacrificed to the anger of slaves, as to that of Kings.

que se haze, es por su ben; "Comfort yourself, Signior Don Carlos; all this is for your good." Let us hearken to a state prisoner, or rather an inhabitant of state prisons, pleading his cause, and that of almost all his companions of misfortune.

"If they who accused me were in earnest, they would not preclude me from employing all means of a legal defence; they would not have caused me to be condemned to the silence of the dead, who at least are free from persecution: They would not conceal my existence and the knowledge of my fate, from every person interested by blood or friendship, to support, to save me; in a word, they would not have so many anxieties, fears, and suspicions, were they not embarrassed in the part they are playing, and destitute of proofs. Let my enemies boldly rise up against me without attacking me through ministerial darkness. Are the laws then without force in my country? Is the sovereign then no longer their guardian and protector? If justice be yet respected, if the tribunals be open for every citizen, I may be judged with safety. Whether innocent or guilty, are not the magistrates sufficient to acquit or condemn me?

"Are they the who prosecute me? If they are possessed of honour, let them not accuse me to the prince, who, all good and all just as he is, may easily be prejudiced and imposed upon; but let them bring me before the magistrates, whom the sovereign himself, not wishing to be at the same time judge and party, has nominated to terminate private and litigated matters: these judges have rules to go by! they have time to investigate; it is their employment, and their duty; the precise letter of the law is the sole director of their judgments: inflexible

“ as itself, they form the conscience of the monarch, and can appear formidable only to criminals and calumniators.

“ If it be who labours at my destruction, why should not the laws be referred to between us? I am not his slave. No, I am the slave of no man; I am a citizen. If he opposes the regular course of the laws, is it not a proof that he has reason to be afraid of them? In that case he ought not to be surprized that he obtains no credit. What will he allege for withdrawing himself and me from our natural judges? The terror of an opprobrious judgment, which would reflect dishonour on his name? What! he is afraid of an opprobrious judgment in an affair which has nothing infamous in it, if not for those who are the prosecutors? Alas! how long has the right of committing injustice been established on a supposition? Does the apprehension he is pleased to entertain authorize him to ordain my civil death? This stigmatizing mark, if there be room for infamy, does it not exist before the judgment, since the transaction is public? Will this judgment be the less delivered, if it ought to be so, because I am shut up, because I am unable to defend myself? This is a permission which has always been refused me. Before the departure of Madam de I was kept confined, apparently, lest I should carry her off. After her departure, they bind me, because, they say, I have carried her off; and that a sentence must be avoided. The sentence will, nevertheless, be passed, and, after the sentence, I must be still shut up, to prevent, they will say, its execution. The result of all this is, that without being heard, I am judged, condemned and punished, and that I must, be-

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“ fides, die a lingering death, a hundred times
 “ more cruel than by the axe of the executioner. A
 “ tyrant of Asia wrote to Alexander V. in whose
 “ hands his brother was detained: *Zizim, in the*
 “ *depth of a prison, does not live; he only languishes;*
 “ *he is more than half dead; it will be rendering him*
 “ *a good office to send him, by a complete death, to*
 “ *those abodes where he will enjoy an eternal repose.*
 “ Bajazet was less cruel than he who buries me in
 “ my dungeon; where I am deprived even of the
 “ possibility of giving myself a sudden death.
 “ What will he still say, this wary and timid man,
 “ that his bowels are dried up with it? What
 “ will he say? An infinity of facts, which the
 “ minister has not the leisure to discuss, and which
 “ I cannot controvert, because they do not reach
 “ me. Once again, I demand, and this question
 “ is sufficient foundation for my claims: why
 “ take me out of the hands of ordinary justice?
 “ Why punish me more severely than it would do
 “ were I convicted, should it even take from me
 “ my life? Is my affair one of those cases so se-
 “ rious, so rare, so terrible, as not to admit of
 “ the delays of judicial forms? Is the safety of
 “ the prince, or the welfare of the state in ques-
 “ tion? Am I a criminal, guilty of lese majesty,
 “ whom it is mercy to permit to live? Cruel
 “ mercy, which delivers over an unhappy man to
 “ the devouring beak of the vulture, without
 “ leaving him any other resource for his misfor-
 “ tunes than that death he in vain invokes, if he
 “ knows not how to *compel* its attention!
 “ This is not the language of a courtier (i), and I
 “ doubt

(i) This letter was addressed to the lieutenant of police, for the
 minister.—*The count de Mirabeau himself is the author of this let-
 ter, and the circumstances alluded to are his own.* [Translator.]

“doubt whether it will succeed in courts; but it is that of a man born free, full of respect for legitimate authority; but who knows his natural and acquired rights, and whom adversity, grief, and persecution combined, never shall debase.”

The reader will be desirous of knowing, perhaps, what answer was given to this letter What answer? None Is it their custom to answer? Would not the dignity of government be wounded, if it assigned motives for its orders, if it retracted an injustice, if it avowed an error, an imposition? How few ministers are there who know, THAT UPRIGHTNESS IS DIGNITY, THAT OPPRESSION ALONE IS MANNERS, AND JUSTICE HONOUR (k). And what has become of that man, who, in chains, has dared to say, THAT HE IS BORN FREE? . . . He still inhabits those places where every thing around him cries out! WHAT SIGNIFIES THAT? YOU ARE SO NO MORE. He beholds himself cut off from life in the middle of his sixth lustre . . . Scarce a feeble ray of light brightens his prospect; but he forgets his own cause for that of human nature, and his hand, enfeebled by the sufferings of his body and his mind, defends liberty. From the age of twenty years it has been exerted against despotism. Doubtless, his mind misgave him of his destiny!

But the question here is not of one man, but of a great number of men, consumed by grief, under the gloomy vaults which cover those effectual tombs; but the rigour of their fate is tempered undoubtedly by some mixture of bounty: that is what will be seen in the faithful exposition of their treatment.

(k) The celebrated (Pitt) *lord Chatham*, in these few words, answered those who asserted that the honour of Great Britain was interested in not receding in the affair of her colonies.



